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FURTHER CORRESPONDENCE

RESPECTING

MOROCCO

PART 66

JAN.-JUNE 1930

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FURTHER CORRESPONDENCE

RESPECTING

MOROCCO

PART 66

JANUARY TO JUNE 1930

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Further Correspondence respecting Morocco.

Part 66.

CHAPTER I.—THE FRENCH ZONE.

[W 302/302/28] No. 1.

Consul-General Sir A. Ryan to Mr. A. Henderson.—(*Received January* 9, 1930.)

(No. 201. Confidential.)

Sir, *Rabat, December* 31, 1929.

WITH reference to your despatch No. 93 of the 16th August, I have the honour to forward copies of the following papers dealing with slavery in Morocco, viz.:—

(1.) A memorandum* by His Majesty's vice-consul at Fez, dated the 22nd October, attached to which is a copy of an important circular issued by the Residency-General on the 21st September, 1923.

(2.) A memorandum,* dated the 25th November, furnished by His Majesty's vice-consul at Marrakesh to His Majesty's consul at Casablanca.

(3.) A memorandum,* dated the 14th December, in which I have summed up certain further views expressed by Colonel Mackereth in the course of personal correspondence.

(4.) An extract* from a personal letter which I sent to Colonel Mackereth on the 14th December after carefully studying the correspondence up to date.

(5.) An extract* from a personal letter from Colonel Mackereth of the 19th December, replying to my questions.

(6.) A memorandum* by Mr. Rapp, dated the 20th December, recording a conversation with an official here, who is greatly interested in native affairs and has made a special study of Islamic law and Berber law and custom.

2. Having myself no independent knowledge of the subject, I have thought it well to forward these papers as they stand. I would ask that they should be treated as confidential, especially the last, as the gentleman whom Mr. Rapp saw is a subordinate official, and the conversation was a private one between personal friends.

3. There are many obscure points, and some on which minor discrepancies may be detected in the information supplied. The main conclusions which may be drawn from the reports tend on the whole to bear out Sir Charles Hobhouse's appreciation of the situation of fact as regards the French Zone, though on some matters his information is open to criticism. I may state here that he rightly discounts what was told him in Rabat, where his informant was, I believe, an excellent but inexperienced young missionary, with a great capacity for having his leg pulled by humorous natives.

* Not printed.

4. It may be convenient if I attempt myself to summarise the conclusions which emerge from the correspondence, as follows:—

(1.) Domestic slavery, especially female slavery, is still widely prevalent in the French Zone, principally in the towns.

(2.) This slavery is, in general, of a very benign character. Slaves are not normally ill-treated, and their legal and customary rights, which are pretty clearly defined, are generally respected.

(3.) Slavery is dying out. The process is much more clearly marked in the case of men than of women, but, subject to the effect of importation of new slaves, the decline of male slavery must ultimately produce decline of female slavery.

(4.) Slavery is more repugnant to pure Berber ideas than to the ideas of the more completely Islamised elements or those in close contact with black races, but the distinction is of little practical importance in view of the mixture of races and general social conditions.

(5.) It is difficult to assess with any accuracy the extent to which new slaves are imported from outside into areas under French control. A certain traffic in imported slaves is undoubtedly carried on, but the total number cannot be great, and there is no evidence of any highly organised trade with the old vicious background of raids, caravans, &c. Sale of children by their parents is apparently practised in some regions in conditions of severe economic stress, but there is no evidence of its being general even in the south, and its consequences are on the whole less undesirable than those of the practice described by Colonel Mackereth in paragraph 9 of his memorandum of the 22nd October.

(6.) A native machinery exists in the important centres for dealings in slaves, but it operates rather as a brokerage system than as a market system; and it is inevitable, so long as slavery exists at all, that some such machinery should provide facilities for transactions, some of which are in the interest of slaves themselves.

(7.) There is no Protectorate legislation on the subject of slavery. The only definite basis of administrative action is the Residency circular appended to Colonel Mackereth's memorandum. The policy of the higher French authorities would appear to be one of non-interference with slavery in its domestic aspects, tacit toleration of discreet dealing in slaves and discouragement of palpable abuses.

(8.) Every slave has an admitted right to seek manumission, not in the French courts, but in the native courts. The legal basis of the right is not clear, but its existence is unquestioned. There is a consensus of opinion that knowledge of the right is general among slaves, at any rate in the towns, where they are far more numerous than elsewhere. If the right is not more widely exercised, it is due to the fact that many slaves can and do prefer to walk away and that still more have no desire to change their state.

(9.) The evidence is conflicting as to whether transfers of slaves are habitually attested by deeds drawn up by public notaries or adouls. This is barred by the Residency circular, but it seems probable that in some cases at least the adouls record transfers. The point has an important bearing on the rather obscure question whether slavery is legally recognised or merely tolerated, but its interest is mainly theoretical so long as the right of any slave, however held, to seek manumission is recognised.

(10.) There is no evidence that mortality among slaves is greater than in other classes of the population.

(11.) There is no evidence that slavery itself or the position in which manumitted female slaves find themselves contribute in any important degree to increased immorality. Concubinage is undoubtedly a concomitant of domestic slavery, but it is not so general as is sometimes supposed, and where it arises out of ordinary slavery, it is governed by rules or customs which benefit the concubine when she has borne a child.

5. If I may hazard an opinion founded on the above conclusions, it is that it would be difficult for the French at the present time to pursue a more heroic policy than they do, and that there is no feature in the system, as it exists in the French Zone to-day, which would justify any foreign Government in concerning itself with

the matter otherwise than by contributing to such efforts as may be possible in the League of Nations to promote the extirpation of slavery generally and to discourage more particularly the creation of new slaves drawn from native races in the remoter parts of Africa.

6. I am sending copies of this despatch and enclosures to His Majesty's consul-general at Tangier.

I have, &c.
ANDREW RYAN.

[W 11930/1246/28] No. 2.

Foreign Office to Consul-General Sir A. Ryan (Rabat).

(No. 3.)

Foreign Office, January 15, 1930.

Sir,

WITH reference to your despatch No. 194 of the 12th ultimo, I am directed by Mr. Secretary Henderson to inform you that he has had under consideration the effect of the proposed Anglo-Egyptian treaty on the maintenance of British Capitulations in the French Zone of Morocco.

2. The first point which arises in this connexion is the bearing on the question of the Anglo-French declaration of 1904. On this point Mr. Henderson is advised that if the French Government agree after negotiations with the Egyptian Government to surrender their Capitulations in Egypt, this fact will not entitle them to abrogate unilaterally the British Capitulations in Morocco in virtue of the terms of secret article 2 of the declaration of 1904. The wording of the article is one-sided, in that it renders the provisions applicable only if His Majesty's Government take the initiative in making proposals for judicial reforms in Egypt. By granting Egypt independence, an act which has received the recognition of the French Government, His Majesty's Government have debarred themselves from introducing reforms in Egypt, and they can no longer require the French Government to give up the Capitulations in Egypt. In the present case the proposals will emanate, not from His Majesty's Government, but from the Egyptian Government, and, from correspondence with the French Ambassador, of which I enclose copies,* you will observe that the French Government claim complete liberty of action in regard to French Capitulations in Egypt. If the independence of Egypt frees the French Government from the obligation imposed by secret article 2, it follows clearly that they are not entitled to claim the right, which under the article flows directly from the obligation, to require the renunciation of the British Capitulations in Morocco.

3. So much for the letter of the article. If it is not materially possible to apply the letter, it is the duty of the parties to endeavour to apply the spirit of the agreement, the underlying principle of which is that both countries should march *pari passu* in Egypt and Morocco. In Egypt the French are free to refuse to abandon their Capitulations, or, if they agree to do so, they will obtain the substitution of the consular courts by the Mixed Courts and such safeguards as they may require. It would be wholly contrary to the spirit of the declaration of 1904 if, in consequence of what the French may agree to in Egypt, His Majesty's Government were compelled in Morocco to give up their Capitulations without negotiation, without safeguards and with the substitution of the British consular courts by the local courts. The most the French could demand is that, in accordance with the spirit of the declaration of 1904, His Majesty's Government should enter into negotiations for the surrender of their Capitulations in Morocco.

4. This demand has not yet been put forward, and, indeed, in the correspondence in regard to Egypt no attempt of any kind has been made by the French Government to connect the question of Morocco with that of Egypt. Nevertheless, it is not too early to consider what the attitude of His Majesty's Government should be if the French Government make this demand, and, indeed, whether the time has not come when His Majesty's Government should, if necessary, intimate that they are prepared in principle to renounce their Capitulations in the French Zone of Morocco subject to satisfactory safeguards for British interests.

5. As you are aware, His Majesty's Government have for some time taken the view that, whilst they are not committed by any treaty to the immediate surrender of the Capitulations in Morocco, they cannot be indefinitely maintained, and an

* Not printed.

intimation to this effect has on more than one occasion been made to the British Merchants' Morocco Association. The only question which has remained open is when and under what conditions the Capitulations should be surrendered. In this connexion one of the most important factors to be considered is obviously the political and economic value of the Capitulations to this country. As you have pointed out in a number of despatches, recent developments in Morocco have rendered the exercise of extra-territorial rights something of an anomaly, and have an ever-increasing tendency to rob them of their value. Nevertheless, it is undeniable that local British interests profess to attach considerable importance from the economic standpoint to the maintenance of the Capitulations, and their surrender, particularly in the present condition of British trade, must inevitably arouse protest in many quarters.

6. From this point of view, provided that the maintenance of the Capitulations is not a vital matter, and on the assumption that their value tends gradually to decrease, the most suitable moment for renouncing them is the moment when such a course can most easily be defended. It seems unlikely that a more suitable opportunity than the present will occur for some time. The surrender of the Capitulations in Morocco, as a counterpart to the surrender of the French Capitulations in Egypt, in accordance with the spirit of the declaration of 1904, would clearly be less difficult to defend than a surrender under pressure in a few years' time, when it might not be possible to show any cogent reason for the action of His Majesty's Government, and when the French Government might not be prepared to accord such liberal terms.

7. On these grounds the Secretary of State is disposed to think that the time has come to open negotiations with the French Government for the surrender of the British Capitulations in the French Zone. If possible, he would prefer that the initiative should be taken by the French Government, both because it would place Great Britain in a stronger position to negotiate the agreement, and because His Majesty's Government would be subject to criticism here if it were known that the first move had come from them. In the circumstances he considers that the best course might be to instruct His Majesty's Ambassador at Paris to intimate quite informally to the Quai d'Orsay that, if the treaty with Egypt is concluded and leads to the renunciation of the French Capitulations in Egypt, His Majesty's Government would be quite prepared to entertain proposals for the surrender of the British Capitulations in Morocco, subject, of course, to reasonable safeguards such as the French Government are demanding in Egypt.

8. Before coming to any definite decision in the matter, the Secretary of State would be glad to receive from you a considered opinion on the political and economic value of the Capitulations, and to learn whether you consider that the present is a suitable moment to surrender them, and, if so, whether you concur in the proposed method of opening negotiations. He would also be glad to have your observations on the safeguards which it would be necessary to demand in return for the renunciation of the Capitulations. For the purpose it may be of assistance to have the enclosed copy of a memorandum containing some suggestions on the subject, which has been drawn up in this Department.*

I am, &c.
C. HOWARD SMITH.

[W 1098/497/28] No. 3.

Lord Tyrrell to Mr. A. Henderson.—(Received January 31.)

(No. 121.)
Sir, *Paris, January 30, 1930.*

THE following particulars may be of interest to you as supplementing those contained in my despatch No. 78 of the 15th January in which I referred to certain questions likely to be discussed by the French Resident-General at Rabat during the visit which he was to pay to Madrid on his way back to his post.

2. I have ascertained from the Quai d'Orsay that the only question relating to customs matters which has been discussed recently between the French and Spanish authorities relates to what was described as the "jumellement" of the customs posts established along the frontier between the French and Spanish Zones.

* Not printed.

Hitherto, the French and Spanish posts at each point have been separated by a certain distance; in future they are to be joined so that the French and Spanish customs officials may keep in close contact. The reason of this, so far as the French are concerned, is to enable them to keep check of what goes on at the Spanish posts. They have evidence that goods are being encouraged by means of illicit remissions of duty to pass through the Spanish at the expense of the French Zone. In this way, an appreciable volume of the trade with Fez which would pass more naturally through the French Zone, where transport facilities are more favourable, has been largely diverted to Laraiche. It is perhaps significant of the present rapprochement between France and Spain in Moroccan matters generally that the French have been able to conclude an agreement, the benefits of which would appear to be somewhat one-sided, in their favour. However that may be, His Majesty's consul-general at Tangier would appear to be correct in his belief that there is no foundation for Mr. Harris's suggestion that arrangements are on foot which may prove inimical to the interests of the Tangier Zone.

3. As regards the unification of command on the Algerian-Moroccan boundary, I understand that this applies only to a single and limited area which includes Tafilalet and which is the point of departure of numerous raids into Algerian territory. There has hitherto been a certain lack of unity in the operations conducted by the Protectorate and Algerian forces, a situation which was mainly responsible for the recent reverse in which the French forces suffered somewhat severely. The command in this section is henceforward to be vested in the Protectorate authorities.

I have, &c.
TYRRELL.

[W 591/277/28] No. 4.

Mr. A. Henderson to Lord Tyrrell (Paris).

(No. 255.)
My Lord, *Foreign Office, January 31, 1930.*

WITH reference to my despatch No. 7 of the 1st January last, I transmit herewith a copy of a despatch from His Majesty's consul-general at Rabat regarding the opening of the port of Agadir.

2. I request that your Lordship, if you see no objection, will draw the attention of the French Government to the statement of the Resident-General, reported in paragraph 4 of Sir A. Ryan's despatch, and that you will seek an assurance that the statement is not intended to imply that British treaty rights will not be fully respected at Agadir or in the Sous.

I am, &c.
ARTHUR HENDERSON.

Enclosure in No. 4.

Consul-General Sir A. Ryan to Mr. A. Henderson.

(No. 10.)
Sir, *Rabat, January 11, 1930.*

I HAD the honour of informing you in my telegram No. 22 of the 27th December that the "opening" of Agadir had been fixed for the 1st January of this year. My telegram was based on an advance copy received from the Residency of a notice relative to a further extension of the main "Zone of Security" in this Protectorate. This notice was published in the "Bulletin officiel" of the 3rd January. I am reproducing the material portion of it in my despatch No. 9 of the 10th January, dealing generally with recent modifications in the Zone of Security.

2. As stated in my telegram, the effect of the notice now in question is to throw open to foreigners an area lying along the north bank of the River Sous, consisting of Agadir itself and the hinterland to a depth of some 20 miles. It gives freedom to engage in commerce and transactions in real property It does not, so far as I can see, affect in any way the legal position as regards the rival claims of the Protectorate, the *séquestre* of ex-enemy property and private individuals, including many British subjects, to property in the Agadir district. It seems not improbable, however, that a

fresh impetus will be given to the efforts of the Protectorate to settle that question and to settle it in a manner as favourable as possible to the claims of the Protectorate. In this connexion I would draw attention to two matters.

3. There have been frequent references in the press of late to negotiations of some sort between the French and German Governments regarding former German interests in Morocco and more particularly in the Agadir district. As I understand it, the legal position of the Protectorate in regard to those properties is indisputable and is such as to give the French a free hand. It is significant that there appeared in the "Bulletin officiel" of the 13th December an *arrêté* of the officer in command at Agadir sequestrating properties acquired in the past by the Mannesmann Suss Landgesellschaft. The list of their properties occupies no less than twelve pages of the "Bulletin." The natural sequel of their sequestration would be the liquidation in due course of the properties. In these circumstances I am puzzled as to what has been passing between the French and German Governments, unless the latter has succeeded in reopening the question of ex-German property in Morocco in connexion with the question of reparations. In that case you will doubtless have information on the subject.

4. My second point is partly connected with the first. I am sending you in my despatch No. 11 of to-day's date, the published version of a long general statement on Morocco made by the Resident-General in Paris on the 8th January. He is reported as having said: "Rien de ce qui peut être utile à notre Protectorat, dans son installation à Agadir et dans le Sous, ne passera en mains étrangères." This statement, expressly given to allay "les justes inquiétudes françaises," is sandwiched between two references to the position *vis-à-vis* Germany and was primarily intended, no doubt, as an assurance that the question dealt with in paragraph 3 above had been settled satisfactorily. The phrase in itself, however, is far more comprehensive and may well cause apprehension in British circles, which are already interested in the land question and are entitled in future to equal treatment in all economic matters, such as trade, mining rights, &c. I submit for your consideration whether His Majesty's representative in Paris might not be instructed to draw attention to M. Saint's language and to ask for an assurance that British rights will be treated with no less respect in the Agadir and Sous regions than in other parts of the Protectorate. His Majesty's Government have in the past fully deferred to the French view that those regions should not be thrown open prematurely to foreign enterprise. It is all the more incumbent on the French, now that Agadir has been opened, to observe their treaty obligations.

5. I am sending copies of this despatch to His Majesty's consular officers at Tangier and Casablanca.

I have, &c.
ANDREW RYAN.

[W 1164/679/28] No. 5.

Consul-General Sir A. Ryan to Mr. A. Henderson.—(*Received February* 3.)

(No. 16.)
Sir,

Rabat, January 24, 1930.

WITH reference to my despatches Nos. 27 and 62 of the 23rd January and the 2nd April of last year, respectively, I have the honour to forward herewith a copy of a very interesting report by His Majesty's vice-consul at Fez on the general situation in his district during 1929. Colonel Mackereth discusses with knowledge and judgment many subjects which have formed the subject of separate despatches from this post.

2. The report shows how insistent and how far from solution are the problems presented by the situation in Tafilelt and the Middle Atlas, with special reference to the former region, which has recently been more in evidence than the latter for reasons connected with military reverses and the evolution of general French as opposed to purely Moroccan policy.

3. Colonel Mackereth throws much light on the difficulties surrounding French agricultural colonisation in the protectorate. He draws attention *inter alia* to the contrast between the freedom with which French capital is being attracted to urban development in Fez as in some other towns and the precarious situation of many agricultural settlers; to the effect of the smallness of the areas allotted to settlers

under Government schemes; and to the deleterious consequences of the policy of cosseting the settlers in other directions.

4. In his covering despatch to me Colonel Mackereth recognises that the prominence given in his report to the Transsaharan Railway project may be out of proportion to its importance as a matter of present-day practical politics. I agree with him, however, in thinking it a matter of the greatest interest now that the Maître–Devallon Commission has reported in a sense which transfers the scheme from the realm of hopeful but vague speculation to that of realisable possibilities. The section of the enclosed report dealing with it may usefully be read in conjunction with the despatch recently addressed by His Majesty's consul-general at Algiers to His Majesty's Ambassador in Paris, No. 3 of the 14th January. The interest of the matter from a Moroccan point of view is enhanced by the fact that the Maître–Devallon Commission has pronounced in favour of a scheme whereby the Oudjda–Bou Arfa Railway, already under construction, would become an integral part of the Transsaharan Railway.

5. The last section of the report deals with native politics. I would draw your special attention to paragraph 27, in which Colonel Mackereth describes some curious repercussions in Fez of recent events in Palestine. No similar repercussions elsewhere in the Protectorate have come to my notice, but in a matter of this kind Fez might be expected to be the most articulate exponent of the feeling of Moorish Moslems.

6. I am sending copies of this despatch and enclosure to His Majesty's consul-general at Tangier.

I have, &c.
ANDREW RYAN.

Enclosure 1 in No. 5.

Vice-Consul Mackereth to Consul-General Sir A. Ryan.

(No. 3.)
Sir,

Fez, January 6, 1930.

I HAVE the honour to transmit to you herewith a political report for this consular district for 1929.

2. In giving prominence to the Transsaharan Railway project and its possible repercussion on Moroccan politics, I realise that I am counting the chicken before it is hatched. There is, as you are aware, much opposition to be overcome still in France before the new line of communications enters upon the stage of realities; yet the idea is, nevertheless, a fertile subject of thought. Therefore, I hope that in my report of facts you will forgive this contemplation of the hypothetical.

I have, &c.
GILBERT MACKERETH.

Enclosure 2 in No. 5.

Political Report for Fez Consular District in 1929.

WHILE public security within the Fez consular district has not been abnormally disturbed and general prosperity has suffered no marked relapse, it cannot be said that any real progress has been made during the past year in either direction. The zones of "Insecurity" remain as large as they were at the close of 1928, and in them insecurity is actually slightly greater. On the other hand, the murders of Europeans by natives in the more settled districts have been, so far as the Fez region is concerned, notable by their absence. The latter part of the year was marked by another minor military disaster on the confines of the Algero-Moroccan border but within Algeria. It led, in conjunction with the furtherance of the Transsaharan Railway project, to a peculiarly interesting conference in Paris in December treating with the policy to be adopted in that part of North Africa where Morocco, Algeria and Mauretania meet.

2. European settlement, if it has not received a permanent set-back, has at least been arrested in its growth. The misfortunes of many European farmers, due to bad market conditions, increased costs, lack of native labour, and the small

average size of farms, has been a very disturbing feature and leads to reflection on the ultimate trend of French civilian activity in Morocco. Is the urban to predominate or the rural?.

3. The appearance of locusts in numbers during December has given rise to fears for the early harvests, but, so far, their depredations have been small and, with the cold snap with which the year closed, it is hoped that but few eggs will hatch out into the destructive "hoppers" in the spring.

4. The natives have extended the land under their cultivation and, despite heavy agricultural taxation, they continue to increase the stocks in their reserve silos. Were it not for the restrictions placed by the Government on the disposal of *lots de colonisation* there is no doubt that many of them would have passed back into native hands.

5. Both the new Resident-General and the young Sultan have paid many more visits to Fez during the year than did either of their immediate predecessors. The venerated Basha of Fez startled everyone in March by making a long address to M. Saint and, amongst other plaints, asked for the abolition of the Keef (the Moorish form of Hasheesh) monopoly held by the Régie des Tabacs and the legal interdiction of this drug in Morocco; he voiced in this matter the general public desire.

6. A court of first instance was established at Fez at the beginning of June and is already heavily laden with cases.

7. Early in December the High Commissioner of the Spanish Zone visited Fez in the company of the French Resident-General, whose guest he was at the Residency in Fez during a four days' visit. It is said that important readjustments of the Franco-Spanish boundary were made and that the question of a railway from Ceuta to link up with the Tangier–Fez Railway was dealt with, but no information appears to have leaked out to show what transpired.

8. Some progress is reported on the two new railways from Oudjda; the track for the one to Fez has been largely completed for a distance of about 50 kilom. (there remain about 320); and the one towards Bou Arfa, which eventually may become part of the Transsaharan, has reached Berguent (82 kilom.), and the track work is proceeding along a further 40 kilom.; the total length of it will be about 270 kilom.

9. The mileage of metalled roads has increased slightly, and in mining some progress can be reported. Credit generally is in a precarious state, although in this respect Fez would seem to be in a healthier state than the rest of the country. Tourist traffic declined slightly, owing possibly to the high prices charged for hotel accommodation in the Transatlantique hotels, which have a monopoly.

10. I shall now venture to dwell rather more lengthily on the questions of the military situation, European settlement, the Transsaharan Railway, and native politics, under those heads.

Military Situation.

11. In the north there have been no fresh developments meriting notice for, in the absence of an agitator, the tribesmen, both in the French and Spanish Zones, have been glad enough to stick to their ploughs in an endeavour to recover from the losses of several years of warfare rather than resort to predatory means for the restoration of their wealth.

12. In the Middle Atlas, by reason of the gross incompetence of a local commander, a mixed column of French artillery, Foreign Legion and native infantry fell into an ambush of mountain tribesmen near Ait Yacoub and lost about 200 soldiers killed and 100 wounded; I have never seen any actual figures published officially. It is amazing that so great a disaster (for colonial warfare) should have caused so little stir; one general was *Limogé*, and this was the only sanction. Judged by our own standards of colonial, even Indian, military intervention, it was little short of lunacy that prompted haphazard armed penetration into difficult mountainous country with troops and officers so manifestly unfit, the section of Foreign Legion perhaps excepted, and the callous outlook on casualties is its corollary. I am not sure that it is not, in some measure, the outcome of the dislike of successive Residents-General to face the facts of the seriousness of the Middle Atlas opposition. The affair of Ait Yacoub has, by its importance, dwarfed other local raids of mountain tribesmen, which occasioned the death during the year of over eighty members of the Foreign Legion (including two Englishmen), some 150 Moorish troops, an unknown number of native levies, a few French officers, and over 200 Algerians and Senegalese. The number of engagements officially recognised was

thirty-four. In consequence, this year has seen the normal annual number of soldiers killed in the Middle Atlas more than doubled.

13. On top of the Middle Atlas outbursts, several unfortunate incidents have occurred on the Algero-Moroccan frontier, most of them actually in Algeria, but due, it is said, to the activities of Bel Kassim N'Gadi—the notorious Tafilelt chieftain. From the purely Moroccan point of view they perhaps presented no very serious aspect; for the French civilians of the coast, whose voices are so often heard, are only sensitive about the insecurity in the Middle Atlas—which is nearer their homes; events in Eastern Morocco are apt to be looked upon as foreign.

14. Algeria, on the other hand, found them most disturbing, and so did the pro-Transsaharan Railway party in France. The most serious of these frontier forays occurred at Djihani on the 18th October, when a platoon of the Foreign Legion (that hardworked corps), with a detachment of Algerian infantry, was ambushed, and lost thirty-one killed and 145 wounded, whilst the raiding party went off with their tails in the air.

15. It must have been most vexing to both the Governor of Algeria and the Moroccan Resident, for only as recently as in May last had they met in conclave at Colomb Bechar to study on the spot means of averting in the future such similar disasters as cost the lives of General Claverie and his escort in December 1928. At this meeting, elaborate plans were drawn up and important preventative projects envisaged. Notwithstanding all this, five months after the conference another and far greater disaster occurred in precisely the same district as before. So something had to be done, and another politico-military conference was assembled in Paris; this time under the direct ægis of the French Government, who, owing to the increasing interest in the Transsaharan Railway, obviously felt called upon to exercise its direct authority in the eventual arrangement. The conference has led, according to newspaper reports, to a unification of the military command for the southern confines of Morocco and Algeria. The news lacks confirmation, however, at the time of writing, but it is, notwithstanding unavoidable administrative difficulties, plausible; especially in view of the press campaign, led by Général Didier, urging that Tafilelt should be attacked simultaneously not only from Algeria and Morocco, but from Mauretania in the south as well. There is much to be said in favour of such a course now that the Comité d'Études for the Transsaharan Railway has pronounced itself in favour of the line Oran–Oudjda–Bou Arfa–Colomb Bechar. The announcement that the mechanisation of the forces employed in south-east Morocco is to be hastened might be taken as indicative of a serious effort in this direction. Military aviation is at the same time to be increased by the addition of eight flights; a new centre for offensive aerial operations being created at Meknes.

16. Although since 1926 a policy of marking time with "pacification" in the Middle Atlas and Tafilelt has been the rule, yet it has, for all that, not served to prevent a steady drain on military resources in flesh and material. The French deputé, M. Callies, stated in the French Chamber in June last that the "pénétration pacifique" of 1927 and 1928 had cost the lives of 3,000 soldiers; he was not contradicted. In military circles it is said that the losses last year were about 600 killed, not including sickness. Such aggregates furnish unpalatable food for thought. They provide further evidence to show that rapid colonisation is a costly business in human lives as well as in treasure.

17. The failure of formed troops against factious tribesmen in 1929 sowed, it seems, the seed of inferior *moral* among the native soldiery. It is, perhaps, ultimately the most serious result of the year's military reverses, for should the loyalty of the native troops fail all is indeed lost: especially in view of the increasingly effective efforts made by the German authorities to discourage enlistment in the Foreign Legion, which contains to-day at least 60 per cent. of Germans. It is worthy of notice that the recruitment even of French officers for native regiments has suddenly become extremely difficult notwithstanding advantages of pay; instead of volunteers being readily forthcoming it is now necessary to detail officers for such service. A heavy veil of official reticence has been drawn over the conduct of the native Moorish units in the Ait Yacoub engagements, yet it has been impossible to conceal the fact that these troops failed utterly and deserted their French officers and n.c.o.'s. It is significant that every French officer with the 7th Tirailleurs marocains perished, whilst all (eight of them) the native officers—products of the Meknes Military College for native officers—lived to fight another day. I am told that the Meknes Military College is to be closed; no wonder. There have been during the year several incidents of native soldiers, Algerians and

Moors, insulting, even assaulting, Europeans, all insignificant except one, in the Fez railway station, where two French policemen were set upon and badly injured by four Algerian infantrymen under the eyes of their own Algerian sergeant, who made no attempt to interfere.

European Settlement.

18. Looking in retrospect upon the progress of European settlement in and around Fez I am struck by the paradox of the startling growth and apparent wealth of the new European town of Fez, standing in relief against the mournful accounts of the difficulty of those Frenchmen settled on the land. It is, of course, an oft-noted fact that the French settlement of Morocco is very largely urban; the immigrants have shown a decided preference to be town dwellers. Much of the building in Fez has been done to the order of French insurance companies, banks (the Banque de Paris et Pays-Bas in particular) and Parisian financial groups as a means of hiding (and hoarding) wealth out of reach of the metropolitan tax-gatherer. So is it explained that, notwithstanding a black year agriculturally and the complete ruin of many settlers, urban construction has gone ahead at a greater rate than in any previous year; over £1 million has been spent on buildings in the Fez New Town in 1929. Rather less than 100,000 acres are in active cultivation by Europeans, nearly all Frenchmen, in the Fez district, whereas over 2 million acres are under native cultivation, of which 800,000 are under grain and the remainder under olive and fruit trees. Here it is interesting to notice that, according to the tertib (agricultural tax) figures, the area under native cultivation has increased during 1929 to a greater extent than did the area in French hands. In addition, practically the whole of the live-stock belongs to natives. European land cultivation is, it will thus be seen, but a very small proportion of the whole, and on three recent occasions lands offered by the Government to French settlers have found no Frenchman willing to accept them and there is talk of letting "selected" natives take them up.

19. One of the reasons for this sudden decadence of French agriculture is to be found in the passion of the native to cultivate his own land, and his preference, if not himself a landowner, to work, under the metayer system, for other natives rather than for wages under a Frenchman. Hence Europeans experience great difficulty in getting farm hands. This is a most menacing feature and suggests the possibility, in the absence of a large immigration of farm labourers, of the European being driven off the land and into the towns through lack of labour. Mechanical aids to agriculture are in most cases ruled out owing to the Government policy of keeping *lots de colonisation* down to sizes which cannot, except in very favourable circumstances, provide the means to bear the heavy capital charges incidental to mechanical culture. Such a view is more pessimistic than probably warranted, yet for the last few months the "Vigie marocaine" has been publishing depressing articles under the title "*Où va notre colonisation?*" all of them dismal in tone.

20. The best excuse suggested for the present *malaise* being that the *colonisation* is suffering from growing pains. There is some truth in this, for foreign settlement is, I consider, far in advance of the political situation. A palliative in the shape of more credit has been the most frequently suggested remedy for the present crisis, which is generally thought to be merely transient. Other suggestions are to the effect that settlers should leave grain to the natives and concentrate on fruit cultivation and market gardening. But this, perhaps, presupposes an agricultural ability and a financial background which are not common amongst the present settlers. Irrigation, it is thought by many, will provide the open sesame to future prosperity for the Europeans. Is it then thought, one may legitimately ask, that the Moors are going to stand on one side and watch the water of their country pour forth its wealth only on to the land forcibly taken from them (for this is the Moors' idea of the origin of the settlers' lands) by the French? They have already become seriously alarmed that the bed of the Fez river has been re-canalised to readjust its flow for the benefit of French interests exclusively. Every time a Resident-General comes to Fez he receives a petition, which becomes less and less humble on each successive occasion, about this very water question. In the past, one of the most usual causes for internecine strife was interference with water channels. So in the matter of irrigation we can but await results.

21. I can only speak from personal acquaintance with a few French farmers in my district, so it may be unguarded of me to draw general conclusions and, in any case, it is too soon to know if they are justified. My impression is, however, that the

country is suffering from too much artificial or governmental stimulation and, as with drug-taking, a period of depression has succeeded the first exhilaration. It is beyond question that the average "colon" in Morocco appears to be of an insufficiently robust type to stand alone and without the protection of the Government and the army. Australia and the whole of the American continents would not be to-day the vigorous growths that they are had not the earlier settlers had largely to fight their own battles. In the meantime European land settlement seems to have come to a standstill, yet urban building goes on apace.

22. If the French in Morocco are driven by circumstances to become the shopkeepers of the Moors, instead of farmers, the nature of their influence in this country will no longer be in accordance with the aims of the progenitors of French intervention. I am not wholly of the number who consider that only by increasing the extent of her nationals' land tenure can France hope to maintain her grasp of Morocco. I have always viewed with mistrust the existing system of sporadic European settlement, for, in the present age, it can never be effective. Thus I cannot conceal my belief that the present bias towards urbanism may find a compensatory feature in a more peaceful prolongation of French occupation. But this, of course, implies a different orientation of native policy.

Transsaharan Railway.

23. In the Transsaharan Railway project a new and important element has entered into Moroccan politics. This line of communication may, in the future, be to Morocco what the Suez Canal is to Egypt. But it would certainly be a mistake to complete the comparison too far, for the Transsaharan is still only embryonic, and even when it is completed can have little more than a local importance. Yet, as it will do a great deal towards anchoring France to Eastern Morocco at least, it may be appropriate to review the question from the purely Moroccan point of view.

24. It will be remembered that at the end of 1928, M. Tardieu, then French Minister of Public Works, established a *Commission d'Études*, with terms of reference embracing the question as to the practicability of a Transsaharan railway from the Mediterranean coast to Senegal, and as to the route that should be followed. Under the leadership of M. Maître-Devallon the commission carried out over the ground and elsewhere during the past year a very complete examination of the possibilities. Incidentally, they were busy round Figuig and Bou Arfa when I was there last April. Their report was presented to M. Steeg, president of the Senatorial Committee, early in December; in it they recommended the route Oran–Oudjda–Bou Arfa–Colomb Bechar–Reggane–Tanezrouf and In Tasit. They estimated that the cost would be 3,187 million francs, and the time necessary for the construction of the railway eight years. It was not foreign to the commission's examination that, by traversing in part Eastern Morocco, the Moroccan, and not the Algerian or Metropolitan, budget would bear the cost of some 500 kilom. of the track, that the new port of Nemours would be a further advantage, and, finally, that the mineral traffic from Bou Arfa would provide steady freight, and the coal mines of Djebel Djerada (South of Oudjda) fuel. The commission considered that in a few years the railway would become a well-paying proposition. The report suggested financing the undertaking through short-term loans spread over eight years and issued by a company, of which the shareholders would comprise the Governments of France, Algeria, Morocco, French West Africa and certain French and Algerian railway companies.

25. The commission drew fresh attention to the question of the *Défense nationale*, for which the railway would transport northwards the "Black" battalions, and, though it is not mentioned, they probably thought of "White" battalions moving southwards if need be; this might possibly upset the balance of power in West Africa and may be likened to the one-time threat of the Bagdad Railway. The route suggested is strategically distant from both Italian Tripoli and the Atlantic seaboard (so easily attacked from the sea by a naval Power). Should the idea fructify, and it seems likely to do so, it is easy to see how the importance of Oudjda would be affected; it might then become the real northern entrance to the heart of Africa, with the ports of Oran, Nemours, Tangier and Casablanca connected with it by rail.

26. But first the way must be cleared—the Filalis of Tafilelt and the Tuaregs of Adrar and Ahaggar must be subdued, the French are, however, not slow to act when frankly faced by military necessity, and a diminishing army in France may find a counterpoise in rapidly transportable reserves from West Africa. In any case, the railway will be, *inter alia*, an important event in Moroccan history.

Native Politics.

27. The Casablanca newspaper, the "Presse marocaine," published on the 7th September a report to the effect that British guns had bombarded the Mosque of Omar in Jerusalem during the course of the disturbances in Palestine last summer. This, not unnaturally, provoked considerable hostile feeling amongst the Moslems of Fez. Owing, however, to the not infrequently expressed friendliness of the leaders of the Moslem society in Fez towards the British consulate (dating back to *after* the establishment of the French protectorate!), a hostile demonstration against it, urged by the hotheads, was discouraged by the more influential Moslems. Instead, a petition was drawn up and addressed to His Majesty's Prime Minister, Mr. MacDonald, protesting against the supposed British partiality for the Jews of Palestine and against the desecration of the Moslem sanctuary of Sidi Brahim under the Dome of the Rock in Jerusalem. But here the French stepped in and ordered the suppression of the document, for they feared the expansion of such anti-Israelite feeling as, before French arms came to defend the Jewish minority, produced almost annually an ebullition of the Moslem Moors against their brother Semites. The report of the "Presse marocaine" was never corrected by that paper, and the bitter feeling against us subsisted. On my return from leave I took steps to show up to the instigators of the petition the falsity of the French newspaper's report. This did, perhaps, some good, but, nevertheless, our action in Palestine has been too unfavourably described by the Islamic papers of Egypt and Tunis for anything but time, and eventually independent Moslem report, to improve matters. Happily, a suggested boycott of British goods found no support. The only interest attaching to this last effort is that it was, I eventually learnt on good authority, promoted by a Frenchman, a M. Kamm, the Fez correspondent of the Casablanca paper, the "Vigie marocaine." This gentleman has "gone native," and poses as a champion of the Moors, even against his own country.

28. The Young Fezzis grow slowly more brazen, and appear to be inclined to free themselves from the restraints imposed by the more sober-minded citizens; we are likely to hear more of them in the future owing to the participation in their activities of two Tunisian lawyers, Tahar Essafi and Marcel Ghozi. The brother of the first-named is, I am told, a feared agitator in Tunis. It would, indeed, be a curious fact were Tunisians in Morocco to repeat the rôle of the Syrians in Egypt.

29. The failure of the French to carry out their original, if perhaps impracticably idealistic, policy of "association" as a variant of the Tunisian protectorate idea is leading them more and more into direct conflict with the indigenous population. No doubt, Lyautey, having in his mind the success of Galliéni's Madagascan organisation and the failure of the Algerian *refoulement* policy, hoped to be able to establish a definite and harmonious midway relationship between the French immigrants and the Moors on "association," as distinct from "assimilation," lines. He hoped to be able to institute a native administration in sympathy with and controlling the native population, yet working in parallel with a distinct French administration for the Europeans, both bracketed under the Sultan's sovereignty. But events have been greater than the man, and natives are now often pulled two ways at the same time, which is disturbing to them, and the hand of iron has to keep emerging from the velvet glove. Indeed, the quietness of the tribes within the zones of security is a remarkable testimony to the skill of the political service.

30. Discontent among the rural population continues to be directed against the French-appointed tribal chiefs (kaids), notwithstanding a genuine effort made by the French political officers to keep kaidal abuses within the bounds of human tolerance. As, however, native agriculture suffered to a much less extent than did European, and the outturn of olive oil (exclusively in rich native hands) is most promising, the Moors have, generally speaking, realised an increase of prosperity: this is always a useful balm to wounded feelings. Perhaps it is merely a natural sequence to such increased prosperity that the number of enlistments into the Tirailleurs marocains has fallen off very considerably. The Moroccan regiments are recruited voluntarily, and although the 8th regiment was embodied eighteen months ago, its strength is still under 800 men. Now that many of the men are terminating their engagements after twelve years' service, the normal limit of the contract, great difficulty is being experienced in other Moorish regiments in keeping battalions up to strength. The obvious remedy of increasing the pay is difficult to apply in view of the low rates paid to the French conscript.

31. There has been continued grumbling over the heavy incidence of the tertib (agricultural tax), especially as it is becoming more and more widely thought that the proceeds of taxation on native agriculture, which is heavy compared with other countries in a similar stage of development, are applied in large part for the exclusive benefits of the French population.

GILBERT MACKERETH.

Fez, January 6, 1930.

[W 1506/277/28]

No. 6.

Lord Tyrrell to Mr. A. Henderson.—(Received February 12.)

(No. 159.)

Paris, February 11, 1930.

Sir,

IN your despatch No. 281 of the 5th instant you were good enough to forward a copy of a letter addressed to the Treasury in which you enquired whether the Lords Commissioners had any information with regard to the purport of the recent Franco-German negotiations relating to the former German interests in Morocco. The matter was also discussed in a despatch from His Majesty's consul-general at Rabat, copy of which was enclosed in your despatch No. 255 of the 31st January, in the course of which he stated that, in view of the indisputable legal right of the Protectorate to do as it liked with the sequestrated German properties, he was puzzled as o what had been passing between the French and German Governments, unless the latter had succeeded in reopening this question in connexion with reparations.

2. As a result of enquiries at the Quai d'Orsay, I have ascertained that the facts are as follows: Some doubt had arisen as to whether the provisions of the Young plan relating to the return of non-liquidated German property applied to Morocco. The French claimed that they did, but the point was not quite plain sailing; it was complicated, for one thing, by the existence of the Franco-German agreement of 1926 and was, anyhow, sufficiently obscure to be open to dispute. Rather than argue out the somewhat fine legal point involved, the French Government thought it better, and the German Government raised no objection, to negotiate a separate agreement. This agreement, which has been concluded but will only enter into force concurrently with the Young plan, provides, as you know, for the return of German properties in Morocco to their former owners, subject, however, to the obligation to retrocede them within a period of six months to purchasers approved by the Moorish Government. Failing such retrocession within that period, the Moorish Government will exercise its right of pre-emption. I have been promised a copy of the text of the agreement, and will forward it to you as soon as received.

3. While on this subject opportunity was taken to carry out the wish, expressed in paragraph 2 of your despatch No. 255, that I should seek an assurance that certain words used by the French Resident-General at Rabat in a speech made recently in Paris at a gathering of the "Association de Maroc" did not imply that British treaty rights might not be as scrupulously respected in Agadir and the Sous as they had been in other parts of the Protectorate. The passage in question ran: "Rien de ce qui peut être utile à notre Protectorat, dans son installation à Agadir et dans le Sous, ne passera en mains étrangères." On these words being quoted to him, the official at the Quai d'Orsay replied that too much attention should not be paid to remarks of a general character made in the course of a speech before an assembly such as the "Association de Maroc," and that, though he could not, of course, say what exactly was in M. Saint's mind, the words could only have been intended as a kind of general assurance that no foreign nation would again be allowed to obtain such a hold as the Germans had succeeded in obtaining in this region in the years preceding the war. They certainly could not be taken to imply that British, or any other, treaty rights would not be respected, and it seemed scarcely necessary to ask whether France intended to honour her obligations in this respect. If such an assurance were, however, really desired, it was readily given.

I have, &c.

TYRRELL.

[W 1588/1063/28] No. 7.

Consul-General Sir A. Ryan to Mr. A. Henderson.—(Received February 13.)

(No. 21. Confidential.)

Sir, *Rabat, February 5, 1930.*

IN your despàtch No. 3 of the 15th January, which reached me on the 29th January, you were good enough to ask for my considered opinion on the political and economic value of the Capitulations in this zone of Morocco, for my opinion on a proposed course of procedure in connexion with their possible surrender, and my views as to the safeguards which should be demanded as a condition of the surrender, if made. I have the honour to report on the first three points, reserving the fourth to be dealt with in a further despatch for reasons which will presently appear.

2. The retention of the Capitulations in French Morocco is a political asset. You, sir, can best judge the value of that asset as a factor in general international relations between Great Britain and France. I rate its local political value extremely low. In a competition of prestige it is certain that, in the eyes of people generally in this country, Great Britain would suffer some diminution from the fact of having surrendered the Capitulations, and it would be a "scoop," more considerable in proportion, for the French to have obtained the surrender. Any effect of this sort would, however, in my opinion, be transitory, as Great Britain would clearly be making the surrender not in favour of the Moorish Government, but of France. Both the Powers really concerned are too great for it to be supposed over any long period, even in Morocco, that the surrender was more than an incident in the evolution of their international relations. To take a still more local point of view, it may be said that for twenty-five years His Majesty's Government have observed too loyally their obligation under article 2, paragraph 2, of the 1904 agreement to have retained any genuine political influence in what is now the French zone. Individual natives aspire to, and set a value on, British protection, a subject with which I will deal later. Moors here and there, less selfish, think how much nicer it would be if Great Britain ran their country instead of France. The vast majority of natives see in this part of Morocco only the march of French influence, as a thing to acquiesce in, to resist, or in some cases to take advantage of. Those who resist have had no encouragement to think of Great Britain as a force to which they might look for support. The outlook of the rest is hardly different from that of the recent writer in the "Times Literary Supplement" who says: "To-day the republic rules, apart from international Tangier and the Spanish zones in Morocco, from the Atlantic to the Gulf of Tunis." Should anything happen to alter the present situation so greatly as to induce Great Britain again to play a political rôle in French Morocco, her ability to do so would not depend on anything so politically insignificant as the survival or non-survival of the Capitulations, but on her magnitude as a world Power.

3. In the above appreciation I have assumed that Great Britain's position in regard to Tangier is so well defined that no alteration in her attitude towards the Protectorate could now react on her interest in the present and future status of the Tangier Zone.

4. I have stated my reasons for considering the political value of the Capitulations to be almost negligible from a local point of view. It is much more difficult to assess their economic value. It cannot be doubted that it amounts to something substantial. I feel certain that British subjects generally overrate it a great deal. In order to strike a balance it is necessary to consider the matter in two aspects, namely, the utility of the Capitulations in themselves and their utility as a bulwark to the principles of economic equality, open door, &c., which in the view of His Majesty's Government (though possibly not in that of France) are independent of them.

5. The rights and/or privileges ensured by the Capitulations in themselves fall under four principal heads, viz.:—

(*a.*) Exclusive British jurisdiction in cases, other than those relating to the title to land, in which British subjects and protected persons are concerned as defendants or accused parties.

(*b.*) The immunity of British subjects and protected persons, at least in principle, from the operation of local law, except in so far as it has been made binding by British authority

(*c.*) The right of bringing Moorish subjects under British protection for reasons mainly of business relationship.

(*d.*) The maintenance of a British postal service, bound up with, though not necessarily an essential part of, the capitulatory system.

6. British subjects attach the utmost importance to their rights under head (*a*). I have found them practically indifferent to the countervailing consideration that, so long as we retain our own jurisdiction, we must be content to rely on the Moorish native courts in cases in which they have to attack Moorish subjects, instead of having the right to take them into the French courts, as they could do if the Capitulations were given up. I have never met a British subject who has considered Moorish courts better than French ones, but it is a common view that the French courts cannot be relied on for impartial justice. This view rests not so much on the suggestion that they are corrupt in a gross sense, but on the belief that they are amenable to official influence or might be swayed by national sentiment. I myself think the view exaggerated, especially in the case of the French courts with which British subjects would be most concerned, viz., the Casablanca courts and the Court of Appeal in Rabat. French procedure is slow compared with that under which the consular court dispenses its rough justice, but I do not think that otherwise the French courts which I have just named are open to serious criticism. I must confess at the same time that the contrary view has been expressed to me by more than one British subject whose opinion has some weight.

7. Turning to head (*b*), there is a fundamental difference of opinion between the French and ourselves. They hold, though for some time past they have been reluctant to assert their contention too openly or too frequently, that the Protectorate is entitled, under the treaties of 1911 and 1912, to legislate for British subjects no less than for other inhabitants of their zone. The practical outcome is that, when local dahirs, &c., can only be enforced by judicial means, we have the whip hand. In other cases, the Protectorate can apply its legislation, unless we are successful in contesting it by diplomatic or consular action. The number of instances in which we have had to attempt this is relatively small. Thanks to an accommodating attitude on both sides, it has been possible to settle the majority of minor disputes without difficulty. A certain number drag on indefinitely or are more or less shelved. Very few, indeed, reach the stage of becoming "diplomatic questions." On our side principles are well sustained. In practice the French usually have the best of it. The survival of the Capitulations makes it easier for us to maintain the sort of friendly understanding which exists. More than this can hardly be claimed for them under the head which I am now considering. It is sometimes suggested that the retention of the Capitulations by two Powers serves as a brake on Protectorate legislation. That has not been my recent experience, except in regard to matters in which the French are hampered not by capitulatory rights proper, but by more general treaties.

8. In these circumstances, the advantage derived by British subjects from their theoretical immunity from local legislation, not sanctioned by His Majesty's Government, is to a large extent illusory and is diminishing. I need only glance at another aspect of it, namely, that there may actually be some disadvantage for British subjects, from a commercial point of view, in remaining in a kind of watertight compartment in what is now a highly commercialised country. The point is disputable and is not at present of great importance, but in some ways it would be better for everyone that the whole of the European commercial community should be governed by the same body of law. The discussion which arose some time ago over the question of employers' liability and workmen's compensation affords an illustration of what I mean.

9. As regards (*c*), I am satisfied that the continuance of the protection system is of little real value to British interests in Morocco, quite apart from the question of its defensibility in modern conditions. British protection is still prized by natives, and in some cases it has a real value for them, for it not only enables them to invoke consular assistance, if they are arbitrarily treated, but it undoubtedly acts as a preventive of arbitrary treatment. This would be an important consideration, if it were the interest of His Majesty's Government to form a native clientèle of their own in Morocco, but I know of few cases in which the British employer as opposed to the protected person derives much advantage. It has been possible in recent years to keep this patently old-world system going without friction with the French by what amounts to a *modus vivendi* under which the number of protected persons is kept within more or less stationary limits. Pressure has been brought to bear on me

by British interests to grant protection more freely. I have no doubt at all that a slight impetus might be given to British trade, if it were known that any Moorish native who would undertake to buy £2,000 worth of British goods could get protection. I am equally certain that, even if this were consistent with the principles of His Majesty's Government, it would provide no sound basis for the future of British trade and it would inevitably lead to trouble with the French.

10. The British postal agencies serve a useful purpose, but their equipment contrasts to their increasing disadvantage with that of the Shereefian, *i.e.*, French, service, which is now on a level with the most highly organised European postal administrations. We still inspire greater confidence as regards our respect for the sanctity of letters, so much so that my Italian colleague here is one of the most constant patrons of the British office in Rabat, acting, I believe, under instructions from Rome. I have not, however, observed that British subjects as a whole show anything like an universal preference for the British post, for commercial or even private correspondence; and I do not think that the disappearance of the British agencies would cause any serious perturbation.

11. To sum up, as regards the direct economic value of the Capitulations, I consider that the importance attached by British subjects to the maintenance of the consular court is real, but exaggerated; that the effect of their theoretical immunity from the operation of local laws not accepted by His Majesty's Government, diminishes as the Protectorate grows bolder; that the protection system has little or nothing to recommend it in present conditions; and that the utility of independent Post Offices as a commercial asset is extremely small.

12. I turn to the value of the Capitulations as a bulwark to the rights ensuing from, or reaffirmed by, the Act of Algeciras. Here they have, I think, a very real importance. Their retention by two great Powers is a constant reminder to France that she has not an absolutely free hand in Morocco. We get the curious phenomenon that the French can sometimes ignore minor rights of a directly capitulatory nature, but that the existence of the Capitulations gives them pause over matters which have nothing to do with Capitulations. If a policeman goes into a British shop without consular assistance we can disregard it or content ourselves with an academic protest. But if the Protectorate Government violates the principle of economic equality, we can say, "What! Do you forget the limitations on your control in Morocco?" And the protest undoubtedly comes with greater force from the two capitulatory Powers than from others. The conclusion is, not that we should cling to the Capitulations at all costs, but that, if we give them up, we should strengthen the edifice of other rights which they indirectly help to support.

13. While holding the above views, I regard with serious misgiving the suggestion that His Majesty's Government should at this juncture take any initiative, however informal, in the direction of bringing about the abolition of the Capitulations. French officials in Morocco are among the least discreet of men and, even if the Quai d'Orsay could be trusted to regard as confidential a communication on the lines indicated in paragraph 6 of your despatch, the officials who would be consulted at this end would almost certainly disclose the fact that Great Britain had made the first approach. I put on one side the doubtful question whether such an approach would not encourage the French to hope to secure the renunciation on more favourable terms than if they asked for it themselves. I am more concerned for the moment with the effect in British commercial circles, in which the knowledge that His Majesty's Government had broached the question of their own motion would produce a storm of indignation. During the past year or so I have seen numerous indications that the British community in Casablanca are at least as sensitive on the subject as they ever have been. Their attitude is, to a great extent, a mixture of bulldoggishness and rather unreasoning apprehension, but it is a factor to be reckoned with. Their fears are reflected in the British Merchants' Morocco Association. That body, like the British Chamber of Commerce here, has, as you say, been warned more than once that the Capitulations cannot be maintained indefinitely, but it has also, I think, been led to expect that they would be surrendered only under pressure, and has been told that as long notice as possible would be given of the approach of the evil day. Both bodies would accuse His Majesty's Government not only of sacrificing British interests in Morocco, but of sacrificing them unnecessarily, if it were known that we had taken the first step. Their resentment would be increased by the fact that the United States would remain the only capitulatory Power. I have, from time to time, tried to counteract the idea that the attitude of His Majesty's Government in such matters could be determined by that of the United States, but I think the connexion of sufficient, if only sufficient, weight

to furnish an additional argument against His Majesty's Government making the first move with the French.

14. I am not disregarding the arguments that the present might be a suitable moment for negotiating the surrender and might afford an opportunity for securing more favourable terms than could be obtainable later. I submit, with great deference, that those arguments are not sufficiently strong to decide the question in favour of an intimation to the French Government. I should indeed welcome the discussion, if the French initiated it themselves without awaiting the time appointed for the obsolescence of article 4 of the declaration of 1904, but I would strongly urge that any question of a British initiative should at least be postponed pending further developments in connexion with the Capitulations in Egypt.

15. I agree that His Majesty's Government should be fully prepared for the contingency of having to discuss the surrender of the Capitulations in Morocco as an outcome of the Egyptian negotiations. Subject to observations of detail which I shall have to offer, I concur generally in the terms of the Foreign Office memorandum enclosed in your despatch. I could wish, however, before dealing with possible safeguards, to study more closely the draft convention of 1919 and then to review a number of matters not specifically dealt with in the memorandum, such as the liquidation of outstanding questions, the possibility of British representation on consultative bodies, the position of British subjects in regard to adjudications of public and quasi-public works, postal arrangements, the treatment of missionaries, &c. This will be a work entailing considerable labour. I would ask your permission to deal with it gradually before my final departure from Rabat, and to furnish a further report towards the middle of March. I can, if necessary, concentrate on it more urgently. If you wish me to do so, I should be grateful for telegraphic instructions.

16. I am sending a copy of this despatch to His Majesty's consul-general at Tangier, who has, I understand, received a copy of your despatch under reply.

I have, &c.
ANDREW RYAN.

[W 1735/277/28] No. 8.

Lord Tyrrell to Mr. A. Henderson.—(*Received February* 18.)

(No. 186.)

Sir, *Paris, February* 17, 1930.

WITH reference to my despatch No. 159 of the 11th February, I have the honour to forward the promised copy of the Franco-German agreement relating to the liquidation of German property, article 5 of which deals with such property in Morocco.

2. I should be grateful if, for the time being, you would regard this document as confidential, as it has not yet entered into force.

I have, &c.
TYRRELL.

Enclosure in No. 8.

Accord concernant la Cessation de la Liquidation des Biens allemands.

LES Gouvernements français et allemand, désireux, toutes questions de droit réservées, de régler par un accord amiable les questions concernant l'influence du nouveau Plan des Experts signé le 7 juin 1929 sur l'exécution de certaines dispositions de la Partie X du Traité de Versailles et des accords conclus postérieurement, ainsi que de hâter le règlement des travaux restant à continuer, sont convenus des dispositions suivantes :

ARTICLE 1er.

Sous réserve des dispositions du présent accord, le Gouvernement français, afin d'assurer la confiance générale indispensable au bon fonctionnement du nouveau Plan des Experts, renonce, à partir de la date du 31 août 1929, à faire usage de son droit de saisir, retenir et liquider les biens, droits et intérêts de ressortissants allemands, ou de compagnies allemandes ou contrôlées par des Allemands, en tant

que ces biens, droits et intérêts ne sont pas déjà liquides ou liquidés ou qu'il n'en a pas été disposé définitivement et en tant que ces biens, droits et intérêts n'ont pas été déjà l'objet de la renonciation prévue à l'article III de la Déclaration du Gouvernement français du 22 décembre 1926.

Il est entendu que pour l'application du présent accord, et toutes questions de principe réservées, le fait qu'une ordonnance de liquidation a été rendue ou que l'Office français des Biens et Intérêts privés a été chargé de poursuivre la réalisation de valeurs ne sera pas considéré comme mesure impliquant la liquidité ou la liquidation ou comme mesure de disposition définitive quant aux biens, droits et intérêts en question.

ARTICLE 2.

La renonciation prévue à l'article précédent ne s'applique pas aux créances pécuniaires séquestrées ou à celles dont l'Office français des Biens et Intérêts Privés a été chargé de poursuivre le recouvrement. L'Office continuera de recouvrer ces créances en appliquant les dispositions du Traité de Versailles, la législation et le droit français actuellement en vigueur pour les créances à liquider. Après la mise en vigueur du présent accord, tout abandon du recouvrement d'une créance et toute transaction tant sur les chiffres que sur les modalités de payement ne pourront avoir lieu qu'après entente avec l'Office allemand de Vérification et de Compensation. Ce dernier sera crédité, dans un compte spécial, du produit de ces recouvrements, après déduction du passif éventuel de la liquidation de chaque créancier allemand et jusqu'à concurrence du montant encaissé de ses créances, pour autant que l'actif encaissé avant le 31 août 1929 n'a pas été suffisant pour payer le passif.

ARTICLE 3.

En ce qui concerne les biens, droits et intérêts faisant l'objet de la renonciation prévue à l'article premier, le séquestre sera levé au plus tard dans les trois mois à partir de la mise en vigueur du présent accord.

Il est entendu que les libérations comprendront les revenus produits par les biens séquestrés depuis le jour de la mise sous séquestre. Les frais de séquestre seront imputés en première ligne sur ces revenus. Quant au surplus éventuel, les biens pourront être retenus jusqu'à son payement par l'ayant droit.

Toutefois, à l'égard des biens qui auraient été réalisés pendant la période transitoire écoulée à partir du 31 août 1929 jusqu'à l'envoi des instructions prescrivant l'arrêt des réalisations, le produit de ces réalisations sera versé directement aux propriétaires allemands.

ARTICLE 4.

Le séquestre institué par le décret du 29 septembre 1914 ratifié par la loi du 31 décembre 1915 sur les biens et avoirs des Sociétés d'assurances allemandes est levé et les biens et avoirs des Sociétés allemandes, y compris les excédents nets de l'administration du séquestre, seront rendus à ces dernières.

Le Gouvernement allemand prend acte de l'arrangement particulier passé à ce sujet entre l'Office des Biens et Intérêts Privés et les Compagnies d'Assurances sur la vie intéressées.

ARTICLE 5.

Pour la restitution des biens, droits et intérêts allemands au Maroc, prévue par le présent accord, les dispositions suivantes seront appliquées :

1. Les ayants droit allemands pourront, dans le délai de six mois, à dater de la mise en vigueur du présent accord, vendre leurs biens, droits et intérêts au Maroc à des acheteurs agréés par le Gouvernement marocain. Jusqu'à cette date, les ayants droit allemands pourront, par des intermédiaires admis par le Gouvernement marocain, faire sur place toutes les vérifications nécessaires et prendre toutes les mesures indispensables pour obtenir la reconnaissance et la validité de leurs droits.

2. Si, dans le délai de six mois, à dater de la mise en vigueur du présent accord, les ayants droit n'on pas vendu leurs biens, droits et intérêts au Maroc, ou si les acheteurs n'ont pas été agréés par le Gouvernement marocain, ce dernier préemptera lesdits biens, droits et intérêts pour un prix fixé conformément aux dispositions des articles 7–9 du Dahir du 3 juillet 1920. Ce prix sera versé directement aux intéressés allemands.

Toutefois, il pourra être fixé une somme globale pour la totalité des biens, droits et intérêts non vendus conformément au No. 1, cette somme devant être versée entre les mains du Gouvernement allemand pour le compte des intéressés.

3. Dans le cas où tous les ayants droit allemands renonceraient, avant l'expiration du délai de six mois, à l'exercice du droit de vente prévu au No. 1 du présent article, le droit de préemption sera exercé par le Gouvernement marocain sans délai après la notification de cette renonciation.

4. Les dispositions qui précèdent ne s'appliquent pas aux permis pour 7 périmètres miniers dans le Souss appartenant à des ressortissants allemands. L'évaluation de ces droits sera faite conformément aux dispositions de l'alinéa 4 de l'article 144 du Traité de Versailles et les montants de ces droits, fixés par décision arbitrale rendue en vertu du règlement minier marocain, seront versés directement aux intéressés allemands.

ARTICLE 6.

En ce qui concerne les concessions de mines séquestrées en Alsace et Lorraine, les dispositions prévues dans l'article III, alinéa 4, de la Déclaration du Gouvernement français du 22 décembre 1926 seront maintenues dans les conditions suivantes :

Avant la fixation du prix de préemption qui n'aura pas lieu avant le 1er mai 1930, le Gouvernement français donnera aux intéressés allemands toutes facilités pour fournir aux autorités françaises compétentes les documents sur la valeur de ces concessions.

Au plus tôt, trois mois après la fixation du prix ou après la mise en vigueur du présent accord, si celle-ci est postérieure à la fixation du prix, l'Etat français amodiera par unité ou par groupe, pour un prix global et suivant le cahier des charges type de la législation minière française, par adjudication aux enchères publiques, ces concessions. Les frais d'amodiation, ainsi que les taxes et impôts échus jusqu'au moment de l'adjudication, seront à la charge des acquéreurs. Si le prix d'adjudication d'une concession ou d'un groupe de concessions est supérieur au prix fixé conformément à l'alinéa précédent, c'est ce prix supérieur qui sera payé directement aux intéressés allemands.

En cas d'accord approuvé par le Gouvernement français entre des intéressés allemands et des ressortissants français sur le prix d'amodiation d'une ou plusieurs concessions, il n'y aura pas lieu à enchères publiques et l'amodiation pourrait intervenir sans délai.

ARTICLE 7.

A partir du 31 août 1929, le Gouvernement français n'exercera plus les droits que lui avaient conférés les alinéas 5, 6 et 7 de l'article 306 du Traité de Versailles, en tant que ces droits n'auraient pas été déjà inclus dans la renonciation contenue à l'article III de la Déclaration du Gouvernement français du 22 décembre 1926.

ARTICLE 8.

Il est entendu que, par interprétation de l'article IV de la Déclaration du Gouvernement français du 22 décembre 1926 et de la lettre interprétative de l'Ambassadeur de la République française à Berlin de la même date, le solde des produits des liquidations des biens, droits et intérêts allemands dans les Colonies et Protectorats français, y compris le Maroc, ainsi que dans les territoires soumis à l'Administration mandataire du Gouvernement français, fait partie du solde visé dans ces dispositions.

Dans le délai d'un an à partir de la mise en vigueur du présent accord, les deux hautes parties contractantes entreront en négociations pour fixer définitivement le montant dudit solde et pour faire cesser en même temps les crédits et notifications prévus par les dispositions des accords antérieurs et du Traité de Versailles quant aux biens, droits et intérêts liquidés.

ARTICLE 9.

Dans le but de faire cesser, aussitôt que possible, les incertitudes en ce qui concerne le solde visé à l'article 8, les dispositions suivantes sont prises :

1. Tout créancier ainsi que toute personne ayant une revendication à exercer à quelque titre que ce soit à l'égard du produit de la liquidation d'un bien allemand,

fera parvenir ou renouvellera sa demande par lettre recommandée adressée au Directeur de l'Office des Biens et Intérêts privés, dans un délai de trois mois à dater de la mise en vigueur du présent accord.

2. Les demandes visées à l'alinéa 1 seront accompagnées de toutes justifications nécessaires à l'examen et à la discussion desdites créances ou revendications.

3. Sont définitivement éteints, à l'égard du produit des liquidations, les créances et droits qui n'auront pas fait l'objet de la demande visée à l'alinéa 1 dans le délai de trois mois à dater de la mise en vigueur du présent accord.

4. Les dispositions précédentes s'appliqueront également aux revendications réservées par l'article 5 de l'arrêté du Commissaire Général de la République à Strasbourg du 11 septembre 1919 relatif aux formalités à accomplir par les détenteurs d'actions, étant entendu que les titres dont la valeur n'a pas fait l'objet de la demande visée à l'alinéa 1 dans le délai de trois mois à dater de la mise en vigueur du présent accord seront considérés définitivement comme biens allemands.

ARTICLE 10.

Si, en raison de l'état déficitaire d'une liquidation, le créancier ne peut obtenir de l'Office payement de tout ou partie de sa créance, l'Office délivrera audit créancier un certificat constatant le montant de sa créance et, le cas échéant, la somme payée. Après un délai de dix mois à compter de la date du certificat, la créance sera définitivement éteinte si le créancier n'a pas interrompu cette prescription par une demande introduite devant la juridiction compétente.

L'Office des Biens et Intérêts Privés donnera à l'Office allemand copie de chaque certificat délivré.

Les présentes dispositions ne préjudicient en rien aux moyens de défense du débiteur.

ARTICLE 11.

Le présent accord ne s'applique pas au recouvrement ni au créditement par l'Office :

1. Du prix ou du solde du prix de vente des liquidations;

2. Des créances de ressortissants allemands pour lesquelles l'Office a donné termes et délais aux débiteurs lorsque ces créances ont fait l'objet d'émissions de traites acceptées par le débiteur;

3. Des créances notifiées par l'Office de Vérification et de Compensation allemand aux Offices de Vérification et de Compensation français et tombant sous les articles 72 et 296 du Traité de Versailles.

ARTICLE 12.

Dans le but d'adapter le fonctionnement du Tribunal Arbitral Mixte franco-allemand au régime de liquidation du passé, les hautes parties contractantes conviennent des dispositions suivantes :

1. Seront irrecevables devant le Tribunal Arbitral Mixte franco-allemand :

(*a.*) Toutes requêtes introduites par application de la partie X, sections III, IV, V, VI et VII, du Traité de Versailles et déposées au Tribunal Arbitral Mixte après l'expiration d'un délai de trois mois à dater de la mise en vigueur du présent accord, à l'exception des requêtes basées sur les articles 299 (*b*), alinéa 2, 304 (*b*), alinéa 2, ou 305, pour autant que le fait générateur de l'action serait postérieur à la mise en vigueur du présent accord. Pour les affaires d'Alsace-Lorraine de la section III, le délai sera de six mois à dater de la mise en vigueur du présent accord.

(*b.*) Les affaires dont l'article II de la Convention de Baden-Baden du 5 mai 1920 avait prévu le renvoi devant le Tribunal Arbitral Mixte et dont ledit Tribunal ne se trouverait pas saisi avant l'expiration d'un délai de trois mois à partir de la mise en vigueur du présent accord. Ces affaires seront de la compétence exclusive des juridictions ou autorités nationales de l'Etat défendeur, compétentes d'après sa législation. Il appartiendra aux intéressés de saisir celles-ci.

2. Sera radiée définitivement des registres d'inscription du Tribunal Arbitral Mixte toute requête pour laquelle la consignation n'a pas été versée ou qui n'a pas été régularisée dans un délai de six mois à compter de la réception par l'intéressé d'un avis du Secrétariat du Tribunal Arbitral Mixte lui enjoignant de verser la consignation ou de régulariser la requête. Dans le cas où l'avis du secrétariat aurait été déjà envoyé, le délai prévu n'expirera pas avant la fin d'un mois, à partir de la mise en vigueur du présent accord. Au cas où le requérant, auquel a été adressé

l'avis du secrétariat de consigner ou de régulariser sa requête, serait introuvable, la requête, faute de payement ou de régularisation, sera radiée après expiration d'un délai de trois mois, à compter de la mise en vigueur du présent accord.

3. Les dispositions précédentes ne modifient ni les autres règles de forclusion établies par le Règlement de Procédure du Tribunal Arbitral Mixte franco-allemand, ni les procédures d'annulation de requêtes déjà terminées, ni les autres dispositions qui s'opposeraient à la recevabilité d'une requête.

4. Les hautes parties contractantes conviennent d'entrer en négociation dans le plus bref délai possible en vue de fixer définitivement les derniers délais d'introduction des requêtes devant le Tribunal Arbitral Mixte, en tant qu'il n'y serait pas pourvu par le présent accord.

5. Les hautes parties contractantes autorisent leurs agents près le Tribunal Arbitral Mixte à souscrire et à notifier au Tribunal un arrangement modifiant pour l'avenir le fonctionnement du Tribunal Arbitral Mixte, dans le but d'assurer la liquidation la plus rapide des instances encore pendantes devant le Tribunal Arbitral Mixte.

ARTICLE 13.

Les différends relatifs à l'interprétation et à l'application du présent accord seront soumis à un Tribunal composé d'un ressortissant de chacune des hautes parties contractantes et d'un troisième arbitre, agissant comme président et appartenant à une nation qui n'a pas pris part à la guerre.

Le président sera désigné pour toutes les affaires et d'un commun accord entre les deux parties. Au cas où cet accord ne pourrait se faire dans un délai de trois mois à partir de la demande de l'une des parties, le troisième arbitre sera nommé par le Président du Tribunal d'interprétation du nouveau Plan des Experts.

ARTICLE 14.

Le présent accord sera ratifié dans les mêmes conditions et en même temps que les accords passés en exécution du Nouveau Plan des Experts et mis en vigueur en même temps que ledit Plan.

Fait à Paris en double exemplaire, en français, et en allemand le 31 décembre 1929.

(L.S.) A. BRIAND.
(L.S.) VON HOESCH.

[W 1588/1063/23] No. 9.

Foreign Office to Board of Trade.

Foreign Office, February 25, 1930.

Sir,

WITH reference to your letter of the 29th January last, I am directed by Mr. Secretary Henderson to transmit herewith a copy of a despatch from His Majesty's consul-general at Rabat, in which he gives his views on the political and economic value of the Capitulations in the French zone of Morocco and on the desirability of opening negotiations with the French Government for their renunciation.

2. In the light of the considerations adduced by Sir A. Ryan and of the opinion expressed in your letter under reference, the Secretary of State is prepared to abandon for the immediate future the idea of taking the initiative informally in Paris. He directs me, however, to point out that the Capitulations in Morocco are an anachronism which cannot be maintained for very long It would, for political reasons, be difficult if not impossible, at a time when His Majesty's Government have renounced or are renouncing the Capitulations in every other part of the world, to refuse to renounce them in a protectorate of a highly civilised and friendly Power. Should the French Government give up their Capitulations in Egypt, His Majesty's Government, for the reasons explained to Sir A. Ryan, will be in a weaker position and it would be difficult to defend the prejudice to good relations with France which would be caused by the retention of the Capitulations in the face of a French request for their abrogation. It is true that no such request has recently been made, but Mr. Henderson feels that the question is certain to arise sooner or later and that it would be easier to negotiate the renunciation of the Capitulations on favourable terms before circumstances arise which will enable the French Government to put forward a demand for the abolition of the Capitulations, which they must know His Majesty's Government will hesitate to reject.

3. For these reasons Mr. Henderson proposes to keep the question constantly under review, and in the meantime he is instructing His Majesty's representatives at Paris and Rabat to watch the situation and report any indications of the intentions of the French Government in regard to the termination of the Capitulations in Morocco.

I am, &c.

C. HOWARD SMITH.

[W 2560/1742/28] No. 10.

Mr. A. Henderson to Mr. R. H. Campbell (Paris).

(No. 959.)

Sir, *Foreign Office, May 7, 1930.*

AS you are aware, the general policy of His Majesty's Government in the United Kingdom has, since their adhesion to the Franco-Moroccan Treaty of the 30th March, 1912, been directed so far as possible towards co-operation with the authorities of the French Protectorate and to the avoidance of disputes on the subject of the treaty rights of British subjects in the French zone. Notwithstanding the generally satisfactory results which have been obtained by the pursuance on both the British and the French side of a policy of accommodation, there has been gradually growing up one problem of considerable importance and great complexity on which I feel it necessary to make representations to the French Government. This problem concerns the rights of British subjects in the matter of real property. I propose in the following paragraphs to explain the existing situation of this problem and to outline the representations which I desire you to make to the French Government. The correspondence on the subject is very voluminous, and I will not therefore trouble you with copies of all the documents, but as the matter is pre-eminently of a legal nature, you may consider it desirable to submit for the consideration of my Legal Adviser the draft of the communication which, after perusal of this despatch, you decide to present to M. Briand.

2. Article 1 of the Franco-Moorish Treaty of the 30th March, 1912, provided that France should introduce general administrative reforms into Morocco, and in pursuance of this article it became necessary for the French authorities to obtain possession of land for purposes of "public utility," an expression on which a very wide construction is placed, and to impose more or less arbitrary redistributions of property. These objects are achieved under a mass of elaborate modern legislation which operates mainly in three ways :—

(*a*) By expropriation on grounds of public utility under the dahir of the 31st August, 1914, and subsequent amending dahirs.

(*b*) By the creation of servitudes on property, notably such as are enforced in connexion with town-planning schemes, under the dahir of the 16th April, 1914, and amending dahirs.

(*c*) By the redistribution of urban property under the dahir of the 12th November, 1917, which provides for the creation of "associations syndicales" of property owners acting either on their own initiative or at the instance of the authorities.

3. All these three methods of acquiring property are open to serious objection on the part of foreign landowners, and the reasons are, shortly, the following :—

4. Although simple expropriation (method (*a*) in the preceding paragraph) is relatively uncommon as an immediate measure, and there have been few recent examples in which disputes have arisen over British cases of the kind, nevertheless in the last resort, if agreement on compensation is not reached amicably between the Protectorate authorities and the landowner, the compensation is settled by the French courts, which naturally tends to scale the compensation down below the true value of the property expropriated.

5. In the case of servitudes, however (method (*b*) above), a much graver injustice is inflicted upon foreign landowners. The most serious servitude is that known as *servitudo non ædificandi*. In connexion with a town-planning scheme the Protectorate authorities can declare the imposition of a servitude of this nature upon any parcel of land with a view to its ultimate expropriation when the scheme is finally carried out. The effect of this action is virtually to prevent the landowner from either developing his property or disposing of it, as no purchaser can be found for a property which lies under such a servitude and which may at any time be expropriated.

Moreover, one of the effects of a *servitudo non ædificandi* is that the compensation payable when the property is finally expropriated is determined by its value at the time of the imposition of the servitude. This provision appears peculiarly inequitable, inasmuch as not only is the capital of the landowner immobilised, but no account is taken of the possible increase in the value of the property. The development scheme may not be carried out for ten or twenty years, and yet at the end of the period the owner will receive no more than the compensation fixed at the outset, although in the interval the property may have increased four-fold in value. There are also other servitudes which are in themselves of lesser importance, but which have given rise to important litigation (see paragraph 9 below).

6. The system of redistribution of properties belonging to groups of owners—the associations syndicales system (method (*c*) above)—is good in principle, but is also open to objection. As explained above, such associations can be formed either by the property owners on their own motion or at the instance of the Protectorate authorities. Once an association is formed, the members elect a committee, which is invested with very wide powers of redistributing the total property involved, imposing contributions upon owners who are benefited and awarding compensation to those who suffer. Although excellent in principle, this system is, however, objectionable in practice. It is often difficult to obtain from the owners who benefit the funds necessary to pay the owners who are to be compensated. This frequently means that an owner is kept waiting for a long time for his money, and in any case the administration is entirely in the hands of the French authorities, whose aim is naturally to promote the policy of the Protectorate without paying undue regard to the interests of individuals.

7. The foregoing paragraphs will, I think, have demonstrated to you the objectionable features of the Protectorate legislation and practice in the matter of real property in Morocco. Whether these objections can be removed and the best method for His Majesty's Government to adopt to this end, are matters of far greater complexity. Before, however, coming to the discussion of these points I think it well to indicate the steps which His Majesty's consul-general at Rabat has taken with my approval and the present position of the Protectorate authorities towards the question.

8. As explained at the beginning of this despatch it has been the general policy to avoid dispute with the Protectorate authorities on these questions and to treat them as far as possible upon an unofficial and private basis, but at the beginning of 1928 Sir Andrew Ryan felt compelled, in view of the unsatisfactory attitude of the Protectorate authorities to the various cases which were then engaging his attention, to address a note to the Chef du Cabinet diplomatique of the Resident-General. A copy of this note, dated the 11th January, 1928, forms the first enclosure in this despatch. You will observe that, after citing the various cases in which British subjects were interested, Sir Andrew Ryan expressed the opinion that the property of a British subject could not be lawfully expropriated save in conformity with the provisions of the Act of Algeciras (namely articles 116–119 of the instrument), that the imposition of servitudes *non ædificandi* amounted in effect, at any rate in certain cases, to expropriation, and that the system of redistribution of estates by the operation of associations syndicales had not been made applicable to British subjects, and that therefore no British subject should be deprived of his property, even if he had agreed to join an association syndicale, before he had received adequate compensation either from the association or from the Protectorate authorities. No reply was ever returned to this note, a fact to which, however, Sir Andrew Ryan did not take exception as he was in continual discussion with the Residency on the subject, and his note did in fact produce one of the results at which he had aimed, namely, the settlement of the Fernau case, the most important with which he was then dealing.

9. During the course of last year the whole question has been brought to a head over a case which, though unimportant in itself, has led to a pronouncement by the highest court in the Protectorate which is directly contrary to the principle enunciated by Sir Andrew Ryan in his note of the 11th January, 1928. The issue has, therefore, now become unescapable. The highest court in Morocco has pronounced, and His Majesty's Government must therefore either acquiesce in its judgment and in the surrender of all the privileges which they have up to the present asserted belong to British subjects in Morocco as the result of the former treaties and the Act of Algeciras, or they must decline to admit the ruling of the court, in so far as British subjects are concerned, and enter into discussions with the French Government as to how British rights are to be safeguarded.

10. The case referred to in the preceding paragraph is that of the Énergie électrique Company and Messrs. Toledano and Levy. The history of the case is as follows: The electric company, in virtue of wide rights ensuing from the general legislation under which their concession was granted by the Protectorate authorities, erected in 1925 three pylons for carrying electric wires on the land of Messrs. Toledano and Levy. The latter applied to His Majesty's consul at Casablanca to have these pylons removed on the ground that the company had no right to erect them. The consul advised the claimants to seek redress in the courts, and abortive negotiations took place between Messrs. Toledano and Levy and the company. Early in 1927 Messrs. Toledano and Levy decided to sue the company, but in the interval the latter, in what later proved to be a misconceived attempt to regularise their position, had obtained in December 1926 a decree of expropriation from the Kaid of Mediounah of so much of Messrs. Toledano and Levy's property as was necessary for laying the cables. Negotiations followed on the question of compensation which again proved abortive, and in September 1927 the electric company changed their tactics and sued Messrs. Toledano and Levy not in pursuance of the decree of expropriation, but in virtue of the general legislation on which their concession rests, *i.e.*, the Dahir of the 29th January, 1918, on electrical concessions, article 11 of which creates special servitudes in favour of concessionnaires. In the meantime and before judgment was delivered in this action the company asked for permission to erect three further pylons on Messrs. Toledano and Levy's property, and as the latter would not agree the matter was referred to the court at Casablanca *en référés*. As the Juge des Référés held himself incompetent, the company took the case to the Court of Appeal at Rabat, which delivered judgment on the 29th June, 1929. A copy of this judgment forms the second enclosure in this despatch. The judgment in the first case was not rendered by the court at Casablanca until the 8th July last and was clearly inspired by the judgment of the Court of Appeal. I need not trouble you with a copy of this latter judgment, as in its main conclusions it follows those of the Court of Appeal at Rabat.

11. Before this judgment was delivered, Sir Andrew Ryan had had further correspondence with the Residency, of which I enclose copies, and I would remark that his note of the 26th April, 1929, has also remained without reply, but as explained in paragraph 8 above Sir Andrew Ryan does not take exception to this. On the receipt of the judgment the whole question was carefully reviewed and discussed with Sir Andrew Ryan who was on leave in this country, and as a result I caused a despatch to be addressed to him on the 18th December last which sets forth the position as it appears to this Department and the legal considerations involved. A copy of this despatch is enclosed. I have had the advantage of Sir A. Ryan's comments upon this despatch and of discussing the matter with him, and I have decided that it is now necessary to address the French Government on the whole subject.

12. I am of opinion that your note to the French Government should begin by referring to the note addressed by Sir Andrew Ryan to M. Mérrilon on the 11th January, 1928, and should point out that this note specifically stated the view that expropriation of the property of British subjects could only take place in conformity with the regulations provided for in chapter VI of the Act of Algeciras. You should not comment on the fact that no reply was made to this note, but you might add that His Majesty's Government are the more confirmed in the correctness of this view by the fact that on the 21st October, 1913, the French Ambassador in London stated in a communication to Sir E. Grey that the French Government were disposed to recognise that the procedure of expropriation provided for in articles 116 to 119 of the Act of Algeciras would only come to an end, so far as British subjects and protected persons were concerned, when His Majesty's Government accepted the protectorate courts (see "Further Correspondence respecting the Affairs of Morocco," Part 47, No. 104).

13. You might continue by stating that His Majesty's Government consider that for all practical purposes servitudes and the redistribution of properties under the régime of the associations syndicales are tantamount to expropriations, seeing that they may either deprive a British subject of his property against his will or may render it impossible for him to dispose of it. In the case of a *servitudo non ædificandi*, expropriation is merely delayed, and delayed in a manner which, in view of the rapid development of Morocco, makes it only too likely that any compensation paid eventually will be inadequate, while in such cases as the Énergie électrique and Messrs. Toledano and Levy the concessionnaire has, in fact, the right to impose a servitude of indefinite

duration which in effect is hardly distinguishable from expropriation. In these circumstances, His Majesty's Government have learned with some surprise of the judgment of the Court of Appeal at Rabat, as this judgment declares that the local law in the matter of real property can be applied to British subjects notwithstanding the Capitulations and the statement of M. Paul Cambon in 1913 respecting the Act of Algeciras, and further declares that "aucun des traités passés entre Sa Majesté le Sultan du Maroc et les Puissances étrangères n'a accordé aux nationaux de ces dernières un privilège quelconque dans le domaine immobilier," whereas the Act of Algeciras clearly does accord special privileges both as to the grounds upon which foreigners may be expropriated and as to the procedure by which such expropriation may be effected. As the proprietors did not think fit to take this case to cassation in France (if, indeed, this course was open to them), and as the time-limit for such action has now expired, His Majesty's Government have no alternative but to bring the whole matter to the notice of the French Government, as a question of principle is involved which, if not satisfactorily settled, will cause grave injustice to the rights of British subjects in the Protectorate.

14. As stated above, the thesis of His Majesty's Government, which they do not think the French Government will dispute, is that the Act of Algeciras is still in force, and that therefore those articles of it which deal with the expropriations of property should be applied in cases where British subjects are concerned. His Majesty's Government recognise that the French Government may object that this is impracticable owing to the alteration of conditions and the non-existence of a diplomatic body at Tangier. Nevertheless, since the Act as a whole is still in force, His Majesty's Government feel that they are on strong ground in claiming that although it may not be possible to carry out every detail of it, the principle of the Act is still operative and that its spirit should be carried out, namely, that the subject of a Capitulatory Power should not be dispossessed of his property or of the enjoyment thereof except with his own consent or with that of his Government. In this connexion it would seem that the provisions of the Act of Algeciras must apply equally whether the measures in question consist of an expropriation pure and simple, whether they consist of the imposition of a servitude the effect of which is indistinguishable from expropriation, or whether they consist in a British subject being deprived of property for the purpose of a redistribution of the land in a specified urban area. The simplest manner of attaining the end in view would be by some kind of arbitration procedure in which the Government of the foreigner concerned should be represented with opportunity for reference to a jointly appointed umpire in case of dispute. The principal questions which would be the object of such arbitration would be (*a*) whether the case in question was a proper one for expropriation or for the imposition of a servitude; (*b*) the manner and amount of compensation to be awarded and the date at which such compensation should be payable.

15. You should conclude by stating that His Majesty's Government would be glad to receive the views of the French Government on the question generally, and that in this matter they are actuated not by any desire to impede the Protectorate authorities but rather the reverse. His Majesty's Government are most anxious, as they have repeatedly shown, to assist and co-operate with the Protectorate authorities wherever possible, but on a question of principle of this importance they must insist upon the rights of British subjects being observed, and they suggest a method which they hope will secure this without embarrassing the French Government.

16. For your guidance I should add that there are certain further points in connexion with the question which may eventually have to be discussed with the French Government but which you may not think necessary to mention at this stage. In the first place you will notice that the judgment of the Court of Appeal of Rabat proceeds partly on the ground that the property the subject of the dispute was "immatriculated" property. Immatriculated property may briefly be defined as property the title to which is fixed by registration. In my opinion any special privileges which may by treaty attach to foreigners are quite unaffected by the question whether the property is or is not immatriculated, and any distinction between the two kinds of property is for this purpose unsound. It is believed, however, that the French authorities in Morocco do not in fact confine their claims in the matter of expropriating British subjects in cases where the property is immatriculated, and, in consequence, it is not necessary to consider the two kinds of property separately.

17. In the second place, it is believed that the French authorities may be disposed to argue that the special privileges reserved to foreigners by the Act of

Algeciras are affected by the provisions of the Franco-German Convention of 1911 and the Franco-Moorish Treaty of 1912, to both of which His Majesty's Government have acceded. The argument is understood to be that these treaties empowered the French authorities in Morocco to substitute at their discretion new legislation for pre-protectorate legislation, and that by acceding to the treaties His Majesty's Legation have consented that any such legislation shall be applicable to British subjects in principle, even though its actual enforcement depends on the promulgation of a King's Regulation making British subjects amenable to it in the consular courts. In my opinion, this argument proceeds on an erroneous view of the bearing and effect of the treaties in question. I regard these in the main as instruments of a political nature laying down the views of the parties concerned as to the policy to be pursued in Morocco rather than as agreements providing for changes in detail in any particular matter. I am further unable to find anything in these treaties which in any way overrules the Act of Algeciras, nor can I find any such specific words as would be necessary to deprive foreigners in Morocco of special rights reserved to them by previous treaties. For these reasons I think the treaties in question may for the present be ignored in taking up this matter with the French Government.

18. A copy of this despatch has been sent to the acting British consul-general at Rabat.

I am, &c.
ARTHUR HENDERSON.

Enclosure 1 in No. 10.

Note addressed to M. Mérillon by Sir A. Ryan.

PAR note No. 296 du 30 septembre 1927, M. le Chef adjoint du Cabinet diplomatique de son Excellence M. le Commissaire Résident général de France au Maroc a bien voulu renseigner M. le Gérant du consulat général de Sa Majesté britannique à Rabat sur le point de vue de la Résidence générale en ce qui concerne la réclamation de M. B. Lima, sujet britannique. Comme cette affaire avait été traitée personnellement par Sir Andrew Ryan, M. Rapp a cru devoir attendre le retour de celui-ci avant de préciser la manière de voir du consulat général là-dessus.

Le consul général de Sa Majesté britannique tient d'abord à faire remarquer à M. le Chef du Cabinet diplomatique que si, dans sa note No. 49 du 22 juin, il a fait allusion au règlement d'une autre affaire, celle de MM. Leriche et Embarek, il n'entendait nullement établir une analogie exacte entre cette question et celle de M. Lima. Il se rappelait simplement la lettre adressée par M. le Chef des Services municipaux de Rabat au consul de Sa Majesté britannique le 23 juin 1923, où M. Truau, tout en relevant le caractère particulier du cas de M. Lima, avait ajouté que "je m'emploierai à régler en premier lieu l'affaire Lima dès que les finances de la ville me le permettront." Voyant dans le règlement de l'affaire de MM. Leriche et Embarek un indice que la ville de Rabat disposait de certaines ressources pour l'acquisition de terrains dans le même quartier, Sir Andrew Ryan pensait qu'elle pouvait en effecter une partie à l'achat du terrain de M. Lima. Il espérait qu'il serait possible d'éviter, ainsi qu'il a dit dans sa note précitée, une discussion épineuse sur des questions de principe.

Déçu dans cet espoir, Sir Andrew Ryan ne peut que rappeler à M. Mérillon le contenu de sa note du 2 septembre 1926, où il a prié le Cabinet diplomatique de l'éclaircir sur la base juridique de la mesure prise à l'égard de M. Lima, afin qu'il pût en toute connaissance de cause soumettre l'affaire à l'appréciation de son Gouvernement.

Pour plus de clarté, Sir Andrew Ryan repose la question juridique, telle qu'elle se présente à son esprit. Il croit utile de lui donner sa forme la plus générale, afin de faciliter l'examen non seulement de l'affaire de M. Lima, mais de certaines autres aussi, notamment les suivantes :

(1) *Affaire Cohen à Oudjda.*—Ce cas fit l'objet d'une note du consulat général, No. 16, du 16 mars 1925, note demeurée sans réponse, malgré le rappel contenu dans la note No. 98 du 6 décembre 1926.

(2) *Affaire Toladano et Lévy*, propriété sise Rue Abdullah, Quartier Gaspar Blanco, Casablanca. Ce fit l'objet d'une note du consulat général, No. 75, du 2 septembre 1926, note également demeurée sans réponse.

(3) *Affaire Fernau*, propriété sise Quartier Bouskoura, Casablanca. Ce cas, après avoir donné lieu à un long échange de vues, fut réglé en principe il y a plusieurs mois, ainsi qu'il ressort de la note du consulat général, No. 53, du 7 juillet dernier. Il résulte d'une correspondance postérieure entre la maison Fernau et M. le Chef des Services municipaux de Casablanca que ce dernier demande un délai de trois ans pour effectuer le paiement des 265,000 fr. revenant à la maison. Cette demande paraît à Sir Andrew Ryan incompatible avec l'accord intervenu.

(4) *Affaire Toledano et Lévy, Quartier T.S.F. Casablanca.*—Ce cas fit l'objet d'un échange de vues entre les autorités françaises et britanniques se terminant par une note du Maréchal Lyautey à l'Agence diplomatique de Grande-Bretagne à Tanger, No. 243 D, du 2 juillet 1924. Sir Andrew Ryan est en train de le soumettre à un nouvel examen, sur la base de certains faits avancés par la Maison Toledano et Lévy, qui a toujours contesté la validité des mesures prises à son égard à la suite des opérations de l'Association syndicale du Quartier T.S.F.

Sir Andrew Ryan prend comme point de départ le fait que le droit d'acquérir la propriété immobilière et de jouir et de disposer librement de cette propriété se trouve assuré aux ressortissants britanniques par des actes internationaux.

En ce qui concerne les propriétaires en général, la législation marocaine a soumis l'exercice des droits de propriété à certaines restrictions qui, depuis le Protectorat, se présentent ordinairement sous trois formes, à savoir :

(1) Expropriation pour cause d'utilité publique ;
(2) Création de servitudes, notamment des servitudes *non ædificandi* ;
(3) Opérations des Associations syndicales de Propriétaires.

Il paraît à Sir Andrew Ryan incontestable, et il serait heureux d'avoir l'assurance que la Résidence générale est d'accord avec lui sur ce premier point, que l'expropriation proprement dite ne peut avoir lieu pour ses ressortissants qu'en conformité du règlement prévu par l'Acte d'Algésiras.

Quant aux servitudes *non ædificandi*, Sir Andrew Ryan a dû insister à plusieurs reprises que ces servitudes, quelquefois raisonnables en soi, produisent dans certains cas, dont celui de M. Lima est un exemple, l'effet pratique d'une expropriation sans indemnité préalable. Il avait soutenu que dans ces cas l'autorité publique devait ou désintéresser le propriétaire ou bien lui laisser la liberté d'utiliser son terrain comme il voulait. La Résidence générale, estimant qu'il y a une différence radicale entre l'expropriation et la *servitudo non ædificandi* même totale, n'a pu se rallier à cette thèse. Dans ces conditions, et en l'absence des solutions à l'amiable préconisées par Sir Andrew Ryan, il devient nécessaire de demander pour quels motifs la Résidence considère la législation marocaine, dont découlent les servitudes *non ædificandi*, comme pouvant être imposée aux ressortissants britanniques.

Bien que, pour compléter son examen, le consul général de Sa Majesté britannique ait fait allusion plus haut aux opérations des Associations syndicales de Propriétaires, il se borne pour le moment à constater que la législation, qui sert de base à ces opérations, n'a pas été non plus rendue applicable à ses ressortissants, et que par conséquent aucun acte des syndicats en question tendant à priver un ressortissant britannique de sa propriété ou à lui en nier la jouissance entière ne peut être considéré comme valable en dehors du consentement explicite du propriétaire britannique, même s'il a consenti à faire partie d'un syndicat, qui ne doit pas se voir privé de la propriété avant le paiement de la contrevaleur, soit par le syndicat ou par l'autorité publique intéressée.

Sir Andrew Ryan regrette la nécessité où il se trouve de se placer sur un terrain si purement juridique, mais il ne voit aucun autre moyen de se décharger de sa responsabilité envers ses propres ressortissants, qui ont patienté si longtemps : l'affaire Lima traîne depuis six ans. Aucune réponse n'a été donnée aux représentations du consulat général concernant les affaires Cohen à Oudjda et Toledano et Lévy, Rue Abdullah, Casablanca. Quant à l'affaire Fernau, la seule qui ait abouti à un règlement, Sir Andrew Ryan ne saurait cacher la surprise avec laquelle il a appris, dès son retour à Rabat, que la ville de Casablanca met de nouveaux obstacles au paiement de l'indemnité due à ses ressortissants.

Consulat général de Sa Majesté britannique,
Rabat, le 11 *janvier* 1928.

Enclosure 2 in No. 10.

Copy of Judgment of June 29, 1929.

EMPIRE CHÉRIFIEN, PROTECTORAT FRANÇAIS DU MAROC.

Au nom de la République française et de Sa Majesté le Sultan.

(Civil 2311.)

ENTRE l'Énergie électrique, société anonyme ayant son siège social à Paris, poursuites et diligences de son directeur à Casablanca, Boulevard du Commandant Fage, appelante ; et

1. Drihen Mouchy, propriétaire, demeurant à Casablanca, chez M. Samuel Lévy, rue Aviateur Coli No. 64 ;

2. Bulogio del Carmen, propriétaire, demeurant à Casablanca, Boulevard d'Anfa No. 112 ;

3. Samuel Lévy, propriétaire, demeurant à Casablanca, rue Aviateur Coli No. 64 ;

4. Lévy Maklouf, propriétaire, demeurant à Casablanca, rue Aviateur Coli No. 64, les trois derniers ayant pour mandataire Me Moreno, avocat à Casablanca, intimés.

La Cour d'Appel d'Rabat, première chambre, dans son audience publique du 29 juin 1929, a rendu l'arrêt dont la teneur suit :

I.—*Rapport de M. le Conseiller Dejean.*

Par requête introductive du 1er février 1929, la Société l'Énergie électrique, société anonyme ayant son siège social à Paris, poursuites et diligences de son directeur à Casablanca, assignait devant le Tribunal de première instance de cette ville les nommés : Drihen Mouchy, Bulogio del Carmen, Lévy Samuel et Lévy Maklouf, propriétaires à Casablanca. Elle exposait :

Que suivant convention du 9 mai 1923 et cahier des charges annexé à cette convention, le Gouvernement chérifien a concédé à un groupe de sociétés auxquelles elle s'est substituée par la suite, la construction et l'exploitation d'usines et de lignes installées pour la production, le transport et la distribution de l'énergie électrique. Que par dahir du 6 février 1924, publié au " Bulletin officiel " No. 563 du 4 mars 1924, p. 431, sa substitution aux sociétés concessionnaires a été approuvée ;

Que suivant dahir du 18 juillet 1923, publié au " Bulletin officiel " No. 563 du 7 août 1923, p. 954, cette convention et ce cahier des charges ont été approuvés ; qu'aux termes de l'article 2 de ce dahir, du 18 juillet 1923, les travaux à entreprendre pour la réalisation de la concession ont été déclarés d'utilité publique ; que la concession susvisée a été consentie à l'exposante en conformité des dispositions du dahir du 29 janvier 1918, " Bulletin officiel " No. 270 du 18 février 1918, p. 156 ;

Qu'aux termes de l'article 2 de ce dernier dahir " La concession comportera déclaration d'utilité publique, elle aura pour effet :

" De conférer [aux concessionnaires], pour les parties de cette distribution à installer sur les propriétés privées, les droits de servitude ci-après :

" 2. En ce qui concerne les parcelles qui sont ni bâties, ni fermées de murs de clôtures équivalentes d'établir également à demeure des canalisations souterraines ou des conducteurs aériens avec leurs supports."

Qu'en conformité de ces textes, elle procède actuellement aux travaux d'installation d'une ligne de transport d'énergie électrique à 60,000 volts de Casablanca à Si Saïd Machou ; que les travaux d'installation de cette ligne ont été approuvés par arrêté du Directeur général des Travaux publics du 28 décembre 1928 ;

Que l'exécution de ces travaux la met dans l'obligation d'implanter trois pylônes dans la propriété qui fait l'objet du titre foncier No. 5153 et qui appartient aux défendeurs susnommés ; que cette propriété consiste en un terrain nu et n'est entourée d'aucun mur ni clôture ; que méconnaissant les droits que le dahir du 29 janvier 1918, article 2, lui confère, les quatre propriétaires susnommés prétendent s'opposer à ce qu'elle implante ses pylônes sur leur propriété, ou subordonner l'implantation au paiement préalable d'une inde ; que la résistance injustifiée des propriétaires entrave les travaux d'utilité publique qu'elle a entrepris ; qu'il est de la plus extrême urgence de faire cesser cette résistance ; dans ces conditions, elle demandait être autorisée à

installer dans la propriété des quatre défendeurs susnommés faisant l'objet du titre foncier 5153 c les pylônes de sa ligne de transport d'énergie électrique de Casablanca à Si Saïd Machou, à être autorisée à pénétrer dans la propriété des quatre défendeurs susnommés, et à y faire exécuter les travaux de construction de ces pylônes et les travaux d'installation de sa ligne d'énergie électrique, au besoin même avec l'assistance de la force publique ;

Qu'elle soit en conséquence déclarée fondée à faire cesser, même avec la force publique, toute résistance de la part des quatre défendeurs, tous les droits de ceux-ci demeurant réservés, au cas où un préjudice leur serait causé, pour en demander réparation.

A l'audience des référés, elle soutenait, au surplus, que l'indemnité ne doit pas être consignée préalablement comme en matière d'expropriation ; qu'en l'espèce l'indemnité n'est que la conséquence des droits que la loi donne à la société et qu'en cas de désaccord sur le quantum, cette question sera tranchée par la suite.

En ce qui concerne la compétence, le dahir de 1918 qui règle la concession attribuée à la société démembre le titre foncier et la seule juridiction compétente pour interdire dans toutes les circonstances ce démembrement, qui tend à consacrer une servitude légale sur ledit titre foncier, est la juridiction française et, en cas d'urgence, le juge des référés.

D'autre part, c'est le terrain immatriculé et non la nationalité du propriétaire qu'il faut considérer, même si celui-ci est étranger et ne relève pas des juridictions françaises.

Les défendeurs soutenaient que le juge des référés est incompétent en raison de leur nationalité anglaise et, en outre, parce qu'il n'y a pas urgence. Au surplus, ce n'est pas le dahir de 1918 qui doit être appliqué en l'espèce, mais la convention d'Algésiras dans sa partie relative à l'expropriation.

Sur quoi, le président rendait, le 2 février 1929, l'ordonnance dont la teneur suit :

" Attendu que si, en principe, la demanderesse fondant son droit sur l'article 2 du dahir du 29 janvier 1918, pour, vu l'urgence, s'adresser au juge des référés, pour vaincre la résistance d'une personne qui s'oppose à l'établissement d'un pylône sur une propriété non clôturée, et si, par suite, le juge des référés est compétent pour ordonner qu'il soit passé outre à cette résistance, encore faut-il que pour résoudre la difficulté, le juge des référés ne soit pas, en même temps, appelé à statuer sur une question de fond ;

" Or, attendu que, dans l'espèce, et en raison des arguments du défendeur quant à la compétence du juge des référés, ce dernier, pour résoudre la difficulté qui lui est soumise, devrait déterminer quelle est la loi applicable aux parties ;

" Que cela est en dehors de ses pouvoirs ;

" Au principal, renvoyons les parties à se pourvoir ainsi qu'elles aviseront, tous droits leur étant réservés ;

" Nous déclarons incompétent."

La Société d'Énergie électrique a, avant notification, interjeté appel de cette ordonnance par requête déposée le 27 février 1928 au greffe du tribunal de première instance de Casablanca.

La procédure d'urgence a été régulièrement suivie.

Moyens de l'Appelante (Me Proal).

La Société électrique reprend son argumentation de première instance et soutient que s'agissant, en l'espèce, d'un droit de servitude établi à son profit par la loi et grevant un immeuble immatriculé, le juge des référés était compétent, quelle que soit la nationalité des propriétaires de l'immeuble, pour statuer en cas d'urgence sur les difficultés auxquelles l'exercice de ce droit peut donner lieu (article 3 du dahir sur l'immatriculation).

Elle conclut à l'infirmation de l'ordonnance entreprise et à l'adjudication des fins de sa requête introductive.

Moyens des Intimes (Me Moreno).

La société appelante confond deux choses absolument distinctes : l'existence d'un droit et les conditions de son exercice. Elle a demandé au juge des référés de

reconnaître l'existence d'une servitude et de rendre une décision consacrant son droit d'user de cette servitude.

Or, il ne s'agit pas d'une servitude ordinaire. Le droit accordé par le dahir du 29 janvier 1918 au concessionnaire participe beaucoup plus, par sa nature, de l'expropriation. L'expropriation est, en effet, une atteinte imposée au propriétaire, une aliénation obligatoire de tout ou partie de ses droits. Elle peut avoir pour conséquence l'expulsion, la dépossession partielle ou l'établissement d'une servitude.

La demande de la société tend donc à faire prononcer une expropriation qui aura pour conséquence une servitude, cette dernière n'étant pas l'objet de la demande, mais son résultat.

Cette expropriation est-elle placée sous un régime spécial ou, au contraire, sous l'empire du dahir du 31 août 1914? Le droit d'expropriation résulte au Maroc comme en France d'une déclaration préalable d'utilité publique suivie d'un arrêté de cessibilité qui détermine les propriétés à atteindre. Le dahir du 29 janvier 1918 n'a pas porté atteinte à ce principe; son article 2 déclare, en effet, que "la concession comportera déclaration publique."

Le dahir de concession doit donc être suivi d'un arrêté de cessibilité et donner lieu pour la prise de possession à la procédure du dahir du 31 août 1914. C'est ce qui résulte de l'article 16 du même dahir du 29 janvier 1918 relatif à "la procédure d'expropriation et d'acquisition de servitudes," lequel renvoie aux formalités du dahir du 13 août 1914. D'ailleurs, la société a, elle-même, pour implanter d'autres pylônes sur la même propriété des concluants, fait prendre par le Caïd de Médiouna un arrêté de cessibilité du 14 décembre 1926 ("B.C." No. 740 du 28 décembre 1926). Or, la procédure instituée par le dahir du 31 août 1914 n'attribue à aucun moment compétence au juge des référés. Dans les cas d'urgence, seul le juge de paix est compétent (article 27).

D'autre part, la compétence exceptionnelle donnée par l'article 3 du dahir sur l'immatriculation aux tribunaux français ne vise que les indigènes (voir *Commentaire Rivière*, t. II, p. 473). Rien ne permet de l'étendre aux ressortissants britanniques qui n'ont pas renoncé à leurs privilèges de juridiction.

L'incompétence des tribunaux français s'impose d'autant plus que l'action dont s'agit déborde le cadre d'une simple action réelle immobilière et découle plutôt de la compétence des tribunaux français en matière administrative et qu'enfin aucune autre procédure d'expropriation ne saurait être suivie à l'encontre de sujets britanniques en dehors de celle prévue par les articles 113 à 119 de l'Acte d'Algésiras.

Les intimés concluent à la confirmation pure et simple.

Questions à trancher.

L'appel est-il régulier et valable?

Sur la compétence, l'article 16 du dahir du 19 janvier 1918 a-t-il pour effet de soumettre à la procédure de l'expropriation toutes les opérations relatives aux concessions électriques?

Dans ce cas, le juge de paix serait-il compétent pour connaître du présent litige, ou y aurait-il lieu, s'agissant de sujets britanniques, de recourir à la procédure d'expropriation prévue par les articles 113 à 119 de l'Acte d'Algésiras?

Ne semble-t-il pas résulter, au contraire, des dispositions des deux derniers paragraphes de l'article 2 du dahir du 29 janvier 1918 que la procédure d'expropriation dont parle l'article 16 ne vise que les expropriations proprement dites exigées par l'établissement de la concession et ne saurait s'appliquer aux servitudes du genre de celle qui fait l'objet du présent litige?

Dans ce dernier cas, la compétence exclusive des tribunaux français établie par l'article 3 du dahir sur l'immatriculation, à l'égard de tous litiges concernant des immeubles immatriculés, s'applique-t-elle aux sujets des nations qui n'ont pas renoncé à leur privilège de juridiction?

Au fond, la mesure sollicitée est-elle justifiée par l'urgence et est-elle de nature à préjudicier au fond?

Qui des dépens?

Le Conseiller-Rapporteur :
DEJEAN.

Vu :
Le Premier Président :
CORDIER.

II.—*Arrêt.*

La Cour,

Ouï M. le Conseiller Dejean en son rapport lu à l'audience publique du 16 avril 1929, les observations présentées à cette audience par Me Proal, avocat pour l'appelante, par Me Gros, avocat loco, Me Moreno, pour les intimés Bulogio del Carmen, Samuel Lévy et Lévy Maklouf, et en l'absence de l'intimé Drihen Mouchy, dûment convoqué;

Vu les conclusions écrites de M. l'Avocat général Jammet, après avoir entendu ce magistrat en ses conclusions orales à l'audience publique dudit jour,

Vu la requête d'appel, l'ordonnance attaquée, le dossier de première instance, les mémoires et conclusions des parties, les pièces produites par elles, ensemble le dossier de la procédure suivie par M. le Conseiller-rapporteur,

Vu les articles 219 et suivants du dahir de procédure civile,

Vu le Traité anglo-marocain de décembre 1856,

Vu la Convention de Madrid de 1880,

Vu l'Acte d'Algésiras du 7 avril 1906,

Vu la Convention franco-allemande du 4 novembre 1911,

Vu la Loi foncière marocaine du 2 juin 1915,

Vu le dahir de janvier 1918 sur les concessions électriques, notamment dans ses articles 2 et 16,

Vu le dahir du 18 juillet 1928 approuvant la concession à la Société l'Énergie électrique des travaux de construction et d'exploitation pour la production, le transport et la distribution de l'énergie électrique et déclarant ces travaux d'utilité publique;

Après en avoir délibéré conformément à la loi,

Attendu que l'intimé Drihen Mouchy, bien que régulièrement touché par la notification de la requête d'appel, n'a pas conclu;

En la forme :

Attendu que l'appel est régulier et valable;

Sur la *compétence:* Attendu que, soit l'expropriation d'un bien privé, soit la servitude établie sur ce bien, en vertu d'un acte de la puissance publique dans un but d'intérêt général économique, touche au statut immobilier du pays qui met en exercice le droit d'expropriation ou de constitution de servitude;

Attendu que aucun des traités passés entre Sa Majesté le Sultan du Maroc et les Puissances étrangères n'a accordé aux nationaux de ces dernières un privilège quelconque dans le domaine immobilier; que, bien au contraire, Sa Majesté le Sultan a conservé l'entier contrôle du statut foncier;

Attendu qu'il serait inexact de dire que Sa Majesté le Sultan serait interdit, à tout jamais, d'apporter des modifications à ce statut;

Attendu que dans le plein exercice de sa souveraineté, il lui restait permis, au contraire, d'établir un régime immobilier nouveau;

Or, attendu que précisément dans l'intérêt des étrangers au Maroc, Sa Majesté le Sultan a, par dahir du 2 juin 1915, institué un régime foncier inspiré des législations les plus récentes, notamment de la législation anglaise dite "Act Torrens";

Attendu que, pour avoir été approuvé par le Gouvernement protecteur de la France, ce dahir n'en est pas moins l'expression de la volonté du Souverain du pays; qu'au regard des nations ayant conservé le privilège issu des Capitulations, ce même dahir, portant réglementation d'un régime foncier, s'imposait sans que fût nécessaire l'assentiment préalable de ces nations;

Attendu que si, à la vérité, le nouveau régime ne créait qu'une faculté pour ceux qui s'y soumettraient et non une obligation, il échet de constater qu'une fois cette faculté exercée, ses dispositions s'imposaient à ceux qui y avaient eu recours;

Or, attendu que l'immeuble en litige est immatriculé;

Attendu que les articles 113 et 114 du dahir formant loi foncière des immeubles immatriculés soumettent ces immeubles aux servitudes établies pour l'utilité publique par les dahirs ou les règlements particuliers, que l'article 214 du même dahir les soumet aux formes de l'expropriation prévues par le dahir spécial à cette matière;

Attendu que ces prescriptions qui touchent au statut immobilier du Maroc s'imposent à tous ceux qui se sont placés sous le régime tutélaire de l'immatriculation;

Attendu, au surplus, que l'un des défendeurs, Drihen Mouchy, est sujet marocain; que le fait qu'il est copropriétaire indivis avec des ressortissants britanniques ne saurait avoir pour effet de le soustraire à ses juges naturels et aux obligations que lui imposent les lois de son pays, surtout quand elles touchent à l'ordre public;

Attendu que, s'agissant d'une matière indivisible, comme l'établissement d'une servitude sur un fonds commun, il est pratiquement impossible de statuer à son égard sans statuer à l'égard de ses copropriétaires ;

Au fond :

Attendu qu'aux termes de l'article 2 du dahir du 29 janvier 1913, la concession confère au concessionnaire le droit d'établir des conducteurs aériens avec leurs supports sur les parcelles qui ne sont ni bâties ni fermées de murs ou de clôtures équivalentes, qu'il est spécifié audit article qu'il s'agit là d'une simple servitude " dont l'exercice n'entraîne dépossession pour le propriétaire " ;

Attendu qu'il ne saurait être question, dans ces conditions, d'appliquer les règles de l'expropriation, ni du versement préalable d'une indemnité ;

Attendu que, conformément aux règles générales des travaux déclarés d'utilité publique, le concessionnaire se trouve investi de tous les droits qui appartiennent à l'Administration ;

Attendu que le juge des référés est compétent pour statuer provisoirement, en cas d'urgence, sur les difficultés que peut faire naître la résistance d'un propriétaire aux droits du concessionnaire, sauf à faire statuer plus tard, s'il échet, sur le droit à l'indemnité ;

Attendu que le juge de paix, aux termes de l'article 16 du dahir du 29 janvier 1918, n'a compétence que pour statuer, dans une certaine mesure, sur ce règlement ;

Par ces Motifs.

Donne défaut contre l'intimé Drihen Mouchy ;

Reçoit l'appel en la forme ;

Au fond : le déclare fondé ; infirme l'ordonnance entreprise ;

Dit que le juge des référés était compétent en la matière, à l'égard de toutes les parties en cause ;

Dit que la Société de l'Énergie électrique est fondée à implanter sans autre procédure sur la propriété dont s'agissent les pylônes nécessaires au transport d'énergie électrique de Si Saïd Machou à Casablanca ; ordonne qu'il sera passé outre à l'exécution de ces travaux malgré l'opposition des intimés ;

Condamne ces derniers aux entiers dépens, ceux d'appel liquidés à 200 fr. (quittance Casablanca du 27 février 1929, F.° 59, C. 2).

Ainsi jugé et prononcé en audience tenue publiquement par la première chambre, au Palais de Justice à Rabat, sis avenue Dar-el-Maghzen, en la salle ordinaire des audiences de la cour.

L'an 1929 et le 29 juin.

Où étaient et siégeaient, ainsi qu'à l'audience publique du 16 avril 1929 où ont eu lieu les débats :

MM. Cordier, premier président, Chevalier de la Légion d'Honneur.

Dejean, conseiller.

Victor Jean, conseiller, officier de la Légion d'Honneur.

En présence de M. Jammet, avocat général, Chevalier de la Légion d'Honneur, occupant le siège du Ministère public.

Assistés de M. Roubaud, commis-greffier.

Suivent les signatures.

En marge est écrit : Enregistré à Rabat le 9 juillet 1929, F.° 93, case 23, Gratis.

Le receveur : Hervé.

Délivré pour copie conforme et pour exécution.

Rabat, le 13 juillet 1929.

Le Secrétaire-Greffier en Chef,
ROUYRE.

Pour copie conforme :

Le Secrétaire-Greffier en Chef,
ROUYRE.

Enclosure 3 in No. 10.

Note addressed to M. Mérillon by Sir A. Ryan.

LE consul général de Sa Majesté britannique à Rabat a l'honneur d'attirer l'attention de M. le Chef du Cabinet diplomatique sur les points suivants ayant trait à un différend entre la maison britannique MM. Toledano et Lévy, de Casablanca, et la Société Énergie électrique du Maroc.

La maison Toledano et Lévy est copropriétaire avec M. Bulogio del Carmen, également sujet britannique, des trois quarts d'une propriété, connue sous le nom de Dehar Edjedour, dans le quartier Oasis aux alentours de Casablanca. Elle s'est plainte en 1925 du fait que la Société Énergie électrique y avait posé trois pylônes sans son autorisation. Comme cet empiétement paraissait à l'époque avoir le caractère d'une atteinte de la part d'un particulier aux droits de propriété des ressortissants britanniques en cause, le consulat de Sa Majesté britannique à Casablanca s'est borné à leur recommander de faire valoir leurs droits par-devant la justice.

La situation existant en 1925 a subi une modification très importante plus tard du fait de la publication au " Bulletin officiel " du 28 décembre 1926 d'un arrêté, pris par le Caïd de Mediouna à la date du 14 décembre 1926, visant l'expropriation, au profit de l'Énergie électrique de la partie d'un terrain, appartenant à " MM. Toledano et Lévy et consorts," nécessaire pour l'établissement de trois supports. Sir Andrew Ryan ne peut que supposer que le Caïd de Mediouna a agi dans la circonstance par inadvertence et qu'il ignorait la nationalité des propriétaires du terrain, qui ne pouvait être légalement exproprié que par application de la procédure prévue par l'Acte d'Algésiras. La seule raison pour laquelle il n'a pas protesté immédiatement contre l'intervention du Caïd, c'est qu'il y avait une instance en cours devant les tribunaux de Casablanca et qu'il attendait la décision de ces tribunaux afin de pouvoir apprécier plus nettement la situation.

Le procès dont il est question plus haut ne s'était pas encore terminé lorsque, au mois de novembre 1928, la Société Énergie électrique a demandé l'assentiment de la maison Toledano et Lévy à l'implantation sur son terrain de trois nouveaux pylônes. Aucun accord n'étant intervenu, l'Énergie électrique a adressé à la maison Toledano et Lévy à la date du 8 courant une lettre, dont M. Mérillon trouvera une copie ci-jointe.*

Il est manifeste qu'aucun acte de concession passé entre l'Administration du Protectorat et l'Énergie électrique ne saurait autoriser cette dernière à occuper des terres appartenant à des ressortissants britanniques. Sir Andrew Ryan a donc l'honneur de prier M. Mérillon d'interposer ses bons offices auprès des autorités locales afin qu'il empêchent tout nouvel empiétement sur la propriété de ses ressortissants. Il prie aussi M. Mérillon de prendre les mesures nécessaires afin que cet acte administratif n'introduise pas un élément de confusion dans la procédure judiciaire.

Consulat général de Sa Majesté britannique,
Rabat, le 22 janvier 1929.

Enclosure 4 in No. 10.

Note addressed to Sir A. Ryan by M. Mérillon.

LE consulat général de Grande-Bretagne à Rabat a bien voulu, par note du 22 janvier dernier, saisir le Cabinet diplomatique d'une réclamation de la maison Toledano et Lévy, de Casablanca, contre la Société Énergie électrique, du Maroc.

Après un exposé des faits qui motivent cette réclamation, Sir Andrew Ryan demandait que des mesures fussent prises en vue de l'abrogation d'un arrêté du Caïd Mediouna visant l'expropriation, au profit de l'Énergie électrique, de la partie du terrain appartenant à MM. Toledano et Lévy.

La Résidence générale a procédé à un examen approfondi de cette réclamation et M. Mérillon a l'honneur de faire part ci-après à Sir Andrew Ryan des conclusions auxquelles l'a conduit cet examen.

La propriété de MM. Toledano et Lévy, qui fait l'objet de leur réclamation, est immatriculée ; l'immatriculation (article 1[er] du dahir de 1913) a pour objet de placer

* Not printed.

l'immeuble immatriculé sous le régime du dahir, sans qu'il puisse y être ultérieurement soustrait.

Ce régime foncier spécial a été défini, par la suite, par le dahir du 2 juin 1915, intitulé "Dahir fixant la Législation applicable aux Immeubles immatriculés," dont l'article 10 dispose que "nul ne peut être contraint de céder sa propriété si ce n'est pour cause d'utilité publique et conformément aux dahirs en vigueur sur les expropriations."

Les articles 113 et suivants de ce même dahir traitent des servitudes établies par la loi. Parmi celles-ci, il en est qui sont fixées, par le dahir du 29 janvier 1918, sur les distributions d'énergie électrique.

Ces dispositions, qui visent exclusivement les fonds de l'immeuble immatriculé, prévoient que les atteintes au droit de propriété sont compensées par un droit à indemnité.

Dans le cas particulier, la Société Énergie électrique au Maroc, concessionnaire d'un réseau de distribution d'électricité, est investie du droit d'expropriation et bénéficie du droit de servitude pour l'implantation de pylônes supportant ses lignes de courant.

C'est à défaut d'accord amiable avec MM. Toledano et Lévy que cette société a eu recours à l'expropriation pour l'implantation de pylônes sur la propriété de ces derniers, provoquant ainsi, conformément à la loi, l'arrêté visé du Caïd de Mediouna.

Il ne semble pas, dans ces conditions, que MM. Toledano et Lévy puissent se prévaloir de leur qualité de ressortissants britanniques pour faire obstacle à une procédure qui vise directement le fonds de leur propriété.

R. MÉRILLON.

Rabat, le 12 *mars* 1929.

Enclosure 5 in No. 10.

Note addressed to M. Mérillon by Sir A. Ryan.

PAR note du 12 mars dernier, M. le Chef du Cabinet diplomatique a bien voulu faire part au consulat général de Sa Majesté britannique à Rabat de la manière de voir de la Résidence générale concernant la réclamation de la maison britannique Toledano et Lévy contre la Société Énergie électrique du Maroc. Cette note soulève une question tellement importante que Sir Andrew Ryan ne saurait y répondre définitivement sans s'en référer au Gouvernement britannique. Cependant il croit devoir de suite attirer l'attention de M. Mérillon sur certaines considérations que lui a suggérées un examen attentif de la note de la Résidence générale.

L'implantation par l'Énergie électrique du Maroc des trois premiers pylônes sur le terrain de MM. Toledano et Lévy avait déjà eu lieu avant le mois de juillet 1925. Pour démontrer que cette mesure ne se justifiait point par les servitudes dont il est question au sixième alinéa de la note de M. Mérillon, il suffit de constater que l'Énergie électrique elle-même s'est vue dans la nécessité de provoquer, dix-huit mois plus tard, la promulgation d'un décret du Caïd de Mediouna, qui frappait d'expropriation le terrain nécessaire pour installer les trois supports en question. Dans ces conditions, Sir Andrew Ryan, même en se plaçant au point de vue du protectorat, s'explique difficilement l'attitude prise par l'Énergie électrique dans sa lettre à MM. Toledano et Lévy du 8 janvier dernier, lettre par laquelle la société exprima l'intention de passer outre de sa propre autorité aux objections soulevées par la maison britannique contre un nouvel empiétement sur sa propriété. Il semble à Sir Andrew Ryan que, comme l'entreprise de l'Énergie électrique est considérée comme étant d'utilité publique, et que cette société exerce par délégation des pouvoirs inhérents à l'État, il appartient à l'autorité publique d'arrêter son action en attendant une solution de la question qui divise la Résidence générale et le consulat général.

Cette question est de la plus haute importance. Il résulte de la note de M. Mérillon que le protectorat revendique, du moins pour les propriétés immatriculées, le droit de procéder à l'expropriation des immeubles appartenant aux ressortissants britanniques par application du Dahir organique du 31 août 1914. Cette thèse va à l'encontre de celle qui a été constamment soutenue par les autorités britanniques et qui a été définie dans les termes suivants dans la note du consulat général No. 3 du 11 janvier 1928 :

"Il paraît à Sir Andrew Ryan incontestable, et il serait heureux d'avoir l'assurance que la Résidence générale est d'accord avec lui sur ce premier point, que l'expropriation proprement dite ne peut avoir lieu pour ses ressortissants qu'en conformité du règlement prévu par l'Acte d'Algésiras."

Tout en se réservant de soumettre la question à son Gouvernement, le consul général de Sa Majesté britannique ne saurait admettre personnellement que les effets de l'immatriculation d'une propriété, si considérables qu'ils soient à d'autres points de vue, vont jusqu'à priver les propriétaires ressortissants britanniques des droits que leur confèrent des accords internationaux, tels la Convention de Madrid et l'Acte d'Algésiras. Sans insister pour le moment sur l'enlèvement des trois pylônes implantés depuis quelques années sur le terrain des MM. Toledano et Lévy, il croit devoir demander qu'il n'y soit ajouté aucun nouvel ouvrage et que le *statu quo* du mois de novembre dernier soit rétabli et maintenu jusqu'à nouvel avis. En attendant les instructions de Sir Austen Chamberlain, il ne peut que faire des réserves expresses pour le cas où l'Énergie électrique, société agissant en vertu d'une délégation du Gouvernement chérifien, ne ferait pas satisfaction à cette demande.

Consulat général de Sa Majesté britannique,
Rabat, le 26 *avril* 1929.

Enclosure 6 in No. 10.

Foreign Office to Sir A. Ryan (Rabat).

(No. 120.)

Foreign Office, December 18, 1929.

Sir,

I AM directed by Mr. Secretary Henderson to acknowledge the receipt of Mr. Rapp's despatch No. 185 of the 15th October last, regarding the expropriation of British real property in the French zone of Morocco, and, in particular, the case of Messrs. Toledano and Levy.

2. So far as can be judged from the correspondence, the records of your conversations at the Residency-General and the judgments of the French courts, the standpoint of the Protectorate Government may be summed up as follows :—

(1) The Protectorate treaty and article 1 of the Franco-German treaty of 1911 entitle the Protectorate Government to substitute new legislation for pre-protectorate legislation, *i.e.*, all Moroccan legislation is applicable to British subjects, and the only reason for which the Protectorate Government ask you to render legislation applicable to British subjects by King's Regulation is to make it enforceable when necessary by the Consular Court

(2) No treaty between the Sultan and foreign Powers gives foreigners any privilege in the matter of real property, and the Sultan retains unrestricted rights in this respect.

(3) In any event, the fact that Toledano and Levy immatriculated their property renders the dahir of 1913 and subsequent enactments applicable to them.

3. It will be convenient to deal separately with each of these points. So long ago as 1915 the French Government claimed that the accession of Great Britain to the Protectorate treaty of 1912 conferred upon the French Government the absolute right to impose upon British subjects in Morocco any taxes which they might consider advisable, regardless of the exemptions acquired for British subjects by the earlier treaties, such as those of 1856, and the Act of Algeciras. The question was dealt with at some length in a despatch of the 17th February, 1920, from Lord Curzon to His Majesty's Chargé d'Affaires in Paris, instructing him to contest the thesis put forward by the French Government (see No. 27, "Further Correspondence respecting Africa," Part V, 1920). The arguments set forth in this despatch hold good to-day. There is nothing in the Protectorate treaty of 1912 which in any way impinges on the provisions of the Act of Algeciras. Both the preamble and article 1 are far too general in their terms in any way to affect the special provisions of that Act, and the same may be said, but even more strongly, of the Franco-German treaty of 1911. Article 1 of the latter is also couched in very general terms, and neither in that article nor in any other are there any specific words such as would confirm the contention that the accession of Great Britain to the convention deprives British subjects in Morocco of the special rights derived from previous treaties. In short, the treaties of 1911 and 1912 must be regarded in the main as instruments of a political nature, laying down the agreement of the parties concerned as to the policy which they were going to

pursue or assent to in Morocco, rather than agreements providing for changes in detail on any particular matter. In particular, article 9, paragraph 2, of the convention of 1911 shows clearly that the convention did not itself either abolish the Capitulations or create any power to abolish them otherwise than by express agreement of all the Powers concerned.

4. It is worth remarking that the French Government have not always adhered in practice to their thesis. In 1920, at the very moment when they were claiming the right to impose taxes on British subjects in Morocco and His Majesty's Government were contesting this claim, the French Government actually addressed a note requesting the assent of His Majesty's Government to the imposition on British subjects of certain consumption duties (see No. 34, "Further Correspondence respecting Africa," Part V, 1920). Later, during the years which followed the conclusion of the first Tangier Convention of 1923, the French Government without demur concurred in the view that taxation at Tangier could not be imposed on Italian nationals without the consent of their Government, despite the fact that Italy has acceded to the Franco-German Convention of 1911 and to the Protectorate Treaty of 1912. It is true that Tangier falls outside the French zone of Morocco, but by delegation of the Sultan the international Administration enjoys the same rights in the Tangier zone as the Makhzen in the French zone.

5. As regards the second argument put forward by the French, the treaty position is not entirely clear. The Anglo-Moroccan treaty of 1856 does not exempt British subjects from Moorish jurisdiction in regard to real property, nor does the Madrid Convention of 1880, article 2 of which provides that :—

> "The right to hold property in Morocco is recognised for all foreigners. The purchase of real property must be made with the previous consent of the Government, and the titles to such property shall be subject to the regulations prescribed by the laws of the country. Any question which may arise respecting such right shall be decided according to the same law, with the appeal to the Minister for Foreign Affairs which is stipulated in the treaties."

The position as described above was freely admitted by His Majesty's Government until 1906 (see paragraph 52 (IV) of the Annual Report for Morocco for the year 1906). The situation was, however, altered by the Act of Algeciras, articles 113–119 of which, whilst allowing the property of foreigners to be expropriated, established a special procedure for the expropriation. Nevertheless, as you point out, the whole position on which the Act of Algeciras rests has been modified with the consent of His Majesty's Government, whose recognition of the French Protectorate has involved their concurrence in a number of changes which render it absolutely impossible to carry out the provisions of the Act in all their detail. For example, the Diplomatic Body mentioned in articles 117 and 118 has cease to exist. In the circumstances it is not entirely satisfactory to have to rely exclusively on the Act of Algeciras. On the other hand, since the Act is still technically in force, the French Government would be on still weaker ground in maintaining that the whole of the Act is a dead letter, and His Majesty's Government would be justified in putting forward the following argument. The Act of Algeciras provides that, in certain conditions, real property, whether belonging to natives or to foreigners, may be expropriated, but articles 113–119 clearly provide a special régime for foreigners and ensure that their property shall not be expropriated at the mere will of the Moorish Government. On the contrary, a procedure is laid down which entitles foreigners and in the last resort their Governments, through the Diplomatic Corps, to have a voice in the matter. Although in the process of time the Diplomatic Corps may have ceased to exist, and it may not be possible to follow in detail the procedure laid down in the Act, the *principle* still holds good, and His Majesty's Government are entitled to maintain that their nationals should not be expropriated without either the consent of the persons concerned or that of their Government. In any event it cannot be denied that the Act of Algeciras is still in force, that it provides for a special régime for the expropriation of the real property of foreigners and that the French courts are wholly unjustified in holding that "aucun des traités passés entre Sa Majesté le Sultan du Maroc et les puissances étrangères n'a accordé aux nationaux de ces dernières un privilège quelconque dans le domaine immobilier." Moreover, the French contention is quite inconsistent with the distinction which they seek to make in this connexion between registered and unregistered property.

6. The third argument put forward by the French Government can with greater certainty be described as unsound. Assuming that British subjects are in virtue of

their treaty rights excluded from the operation of local legislation in the matter of their real property, the position is not altered by the fact that local legislation provides that persons who immatriculate their property will render themselves liable to expropriation on grounds of public utility. If the French argument were admitted, it would be possible for the Protectorate Government, by means of systematic legislation, gradually to abrogate British treaty rights, and His Majesty's Government are justified in maintaining that British subjects who immatriculate their property do so subject to any modification which the treaty position may effect in the rules and regulations to which they would otherwise be submitting themselves by the act of immatriculation. Or, to look at the matter from another point of view, the Moroccan Government, who are bound by treaty to accord special rights to British subjects in the matter of the expropriation of real property, have no right to seek to bring British subjects indirectly under the operation of such laws by alleging that the individual has by his own act consented to be bound by them. Such an argument would imply that an individual has the right to contract out of a treaty. Since, however, the treaty is not between the individual and the Government in question, but between his own Government and the foreign Government, the argument cannot be sound unless the treaty itself expressly provides that individuals may, in certain circumstances, deprive themselves of the benefits of the treaty.

7. Before instructing you as to the terms of the reply to be made to the Protectorate Government, the Secretary of State will be glad to learn whether you have any observations to offer on the appreciation of the treaty position set forth in this despatch.

I am, &c.
C. HOWARD SMITH.

[W 6174/1742/28] No. 11.

Lord Tyrrell to Mr. A. Henderson.—(*Received June* 16.)

(No. 657.)

HIS Majesty's representative at Paris presents his compliments to the Secretary of State for Foreign Affairs, and has the honour to transmit to him copy of a note sent by him to the French Ministry for Foreign Affairs, dated the 16th June, respecting the expropriation of property of British subjects in Morocco.

Paris, June 16, 1930.

Enclosure in No. 11.

Note to French Ministry for Foreign Affairs.

IN a memorandum addressed to the "Chef du Cabinet diplomatique" of the French Resident-General in Morocco on the 11th January, 1928, copy of which is enclosed,* His Majesty's consul-general at Rabat expressed the view that expropriation of the property of British subjects in Morocco could only take place in conformity with the regulations provided for in chapter 6 of the Act of Algeciras. His Majesty's Government fully approved the terms of Sir A. Ryan's communication and his view on the point at issue. This view is confirmed by the statement made to Sir Edward Grey by the French Ambassador in London, in a note of the 20th October, 1913, to the effect that the Government of the Republic was ready to recognise that the expropriation procedure provided for in articles 116 to 119 of the Act of Algeciras would only come to an end, so far as British subjects and protected persons were concerned, when His Majesty's Government accepted the Protectorate courts. A copy of M. Cambon's note is enclosed.*

2. His Majesty's Government consider that for all practical purposes the servitudes imposed by, and the redistributions of properties effected under, the régime of the "Associations syndicales" are tantamount to expropriations. They may deprive a British subject of his property against his will or render it impossible for him to dispose of it. In the case, in particular, of a "servitude non ædificandi" expropriation is merely delayed, and delayed in a manner which, in view of the

* Not printed.

rapid development of Morocco, makes it improbable that any compensation eventually paid will be adequate.

3. The attention of His Majesty's Government has more especially been drawn to this question by the developments in the case of the "Énergie électrique" Company *versus* Messrs. Toledano and Levy (the second case mentioned by Sir Andrew Ryan in the enclosed memorandum*). In this case the company, by assuming the right to place pylons for carrying overhead wires upon the land of the defendants without previously paying compensation, claimed to be able to impose a servitude of indefinite duration which, in effect, is hardly distinguishable from expropriation. In these circumstances His Majesty's Government learned with some surprise of the judgment of the Court of Appeal at Rabat, which pronounced on the case on the 29th June, 1929. A copy of the judgment is enclosed.*

4. According to this judgment the local law in the matter of real property can be applied to British subjects, notwithstanding the Capitulations and M. Cambon's statement of the 20th October, 1913, respecting the Act of Algeciras. The judgment states also that "Aucun des traités passés entre Sa Majesté le Sultan du Maroc et les Puissances étrangères n'a accordé aux nationaux de ces dernières un privilège quelconque dans le domaine immobilier." Yet the Act of Algeciras clearly does accord special privileges both as to the grounds upon which foreigners may be expropriated and as to the procedure by which such expropriation may be effected. His Majesty's Government feel that they must bring the matter to the notice of the Government of the Republic. A question of principle is involved which, if not satisfactorily settled, may cause grave prejudice to the rights of British subjects in the Protectorate.

5. The opinion of His Majesty's Government, which they do not think the Government of the Republic will dispute, is that the Act of Algeciras is still in force and that those of its articles which deal with the expropriations of property should be applied in cases where British subjects are concerned. His Majesty's Government recognise that it may be said that, owing to changed conditions and the non-existence of a Diplomatic Body at Tangier, some adaptation of its provisions is required. Nevertheless, since the act as a whole is still in force, His Majesty's Government feel justified in claiming that, although it may not be possible to carry out every detail of it, the principle of the Act is still operative and that its spirit should be observed in so far as the point now at issue is concerned, namely, that the subject of a capitulatory Power should not be dispossessed of his property or of the enjoyment thereof, except with his own consent or with that of his Government. It seems also that the provisions of the Act of Algeciras must apply equally whether the measures in question consist of an expropriation pure and simple, whether they consist of the imposition of a servitude the effect of which is indistinguishable from expropriation, or whether they consist in a British subject being deprived of property for the purpose of a redistribution of the land in a specified urban area.

6. His Majesty's Embassy is directed by His Majesty's Principal Secretary of State for Foreign Affairs to state that, in the opinion of His Majesty's Government in the United Kingdom, the simplest manner of attaining the end in view would be by some kind of arbitration procedure in which the Government of the foreigner concerned would be represented with opportunity for reference to a jointly-appointed umpire in case of dispute. The principal questions for arbitration would be (*a*) whether the case in question was a proper one for expropriation or for the imposition of a servitude, (*b*) the manner and amount of compensation to be awarded and the date at which such compensation should be payable. In asking for the views of the Government of the Republic on this question, His Majesty's Embassy is directed to explain that His Majesty's Government are not actuated in this matter by any desire to impede the Protectorate authorities. Rather are they most anxious to co-operate with them. It is this anxiety which prompts them, on a question of principle of such importance as to leave them no option but to insist upon the rights of British subjects being observed, to suggest a method which they hope will secure this end without embarrassment to the Government of the Republic.

June 16, 1930.

[**W 5551/5551/28**] No. 11 A.

Acting Consul-General Rapp to Mr. A. Henderson.—(*Received May* 28.)

(No. 82.)

Sir, *Rabat, May* 22, 1930.

WITH reference to Sir Andrew Ryan's despatch No. 158 of the 25th July last, I have the honour to report that the usual summary of the budget of the French Protectorate in Morocco for the year ending the 31st December, 1930, was published in the "Bulletin officiel" of the 16th May last.

2. The following table establishes a comparison between the estimates for the current year and those of 1929 :—

Estimated Receipts.			*Estimated Expenditure.*		
—	1929.	1930.	—	1929.	1930.
Ordinary Budget—			*Ordinary Budget—*		
	Fr.	Fr.		Fr.	Fr.
Direct taxes (tertib, &c.)	162,550,000	160,480,000	Debt charges	149,608,637	167,547,379
Indirect taxes (Customs, &c.)	189,100,000	223,000,000	Expenditure other than debt charges ..	538,484,190	634,740,924
Consumption duties and other indirect taxes ..	163,260,000	180,810,000			
Monopolies (P.T.T., &c.)	64,154,450	117,227,000			
Other receipts	109,306,520	121,054,620			
Total of ordinary budget	688,370,970	802,571,620	Total of ordinary budget	688,092,827	802,288,294
First Special Budget, Loans, &c.—			*First Special Budget, Loans—*		
Proceeds of loans	139,391,750	167,028,000	Expenditure chargeable to proceeds of loans	139,391,750	167,028,000
Second Special Budget—			*Second Special Budget—*		
From revenue for works, &c., of general interest	73,463,000	99,983,000	Expenses chargeable to reserve fund, &c.	128,153,000	162,673,000
Other receipts	54,690,000	62,690,000			
Grand total of receipts	955,637,000	1,132,272,620	Grand total of expenditure	970,869,015	1,131,989,294

3. Estimated receipts at 802,571,620 fr. show an increase of 114,200,650 fr. on the 1929 figure, due, in large part, to the expansion of existing sources of revenue. The only new tax is that on tobacco (see Sir Andrew Ryan's despatch No. 141 of the 18th July, 1929), which is estimated to produce 20,000,000 fr. of the above increase.

4. The short report by the Resident-General to the Sultan prefixed to the 1930 summary of estimates states that the new resources will allow the payment of salaries to officials proportionate to the cost of living. They will also enable the Protectorate to carry on with the programme of works of economic utility, to extend the area of the zone of security, to open more schools, to fight plagues and epidemics and to pursue the task of remedying the housing shortage. The report ends by stating that the financial situation, which appears excellent, is the consequence of the prosperity of the Protectorate and of the improvement in the material conditions of life of its inhabitants.

5. I am sending a copy of this despatch to His Majesty's consul-general at Tangier.

I have, &c.
T. C. RAPP

CHAPTER II.—THE SPANISH ZONE.

[W 3746/770/28] No. 12.

Sir G. Grahame to Mr. A. Henderson.—(Received April 12.)

(No. 155.)

Sir, *Madrid, April 4, 1930.*

I HAVE the honour, with reference to your despatch No. 326 of the 22nd July last, to transmit to you herewith copy and translation of the Spanish text of the declaration signed at The Hague on the 27th March, 1929, by which the Netherlands renounce the régime of Capitulations in Morocco. The declaration was published in the "Madrid Gazette" of the 3rd instant.

I have, &c.
GEORGE GRAHAME.

Enclosure in No. 12.

Declaration signed at The Hague on March 27, 1929, between Spain and the Netherlands by which the latter renounces the Régime of Capitulations in Morocco.

(Translation.)

THE undersigned, duly authorised by their respective Governments, in mutual agreement, make the following declaration:—

In view of the guarantees of juridical equality offered to foreigners by the Spanish courts of justice in the Protectorate, the Royal Netherlands Government renounces the right to claim for her consuls, her subjects and her institutions in the Spanish Zone of the Shereefian Empire all rights and privileges derived from the régime of Capitulations.

The treaties and conventions, of whatsoever nature, in force between Spain and the Netherlands are extended with full rights, excepting clauses to the contrary, to the Spanish Zone of the Shereefian Empire. All rights and privileges not mentioned in treaties and conventions between Spain and the Netherlands which have been granted, or may in the future be granted, in the Spanish Zone of the Shereefian Empire to another nation shall be extended equally and unconditionally to Dutch consuls, subjects, protected persons and institutions.

Dutch-protected persons whose names appear on the list for the year 1928, communicated to the authorities referred to in article 7 of the Madrid Convention of the 3rd July, 1880, as also former Dutch-protected persons of the French Zone of the Shereefian Empire and of the International Zone of Tangier, the lists of which persons have been communicated by Her Majesty's Government to the Government of His Catholic Majesty, will be subject, during their lifetime, to the Spanish courts of justice of the Shereefian Empire.

Legal proceedings, civil or criminal, already commenced before Dutch consular jurisdiction in the Spanish Zone of the Shereefian Empire when the present declaration comes into force, will continue to be dealt with by the competent Dutch courts up to and including the final Court of Appeal. Sentences passed in such procedure shall receive the exequatur of the Spanish jurisdictions in the said zone, the latter not proceeding, however, to a fresh examination of the grounds of the cases.

No new protection may be granted by Dutch consuls, subjects and institutions in the Spanish Zone of the Shereefian Empire.

The present declaration shall be ratified and the ratifications exchanged at The Hague when this is possible. It shall enter into force one month after the date of the exchange of ratifications.

Drawn up in duplicate at the Hague on the 27th March, 1929.

(Signed)

(Signed)

This declaration has been duly ratified and the exchange of ratifications was effected at The Hague on the 24th day of the present month of March.

Madrid, March 29, 1930.

The Secretary-General,
E. DE PALACIOS.

CHAPTER III.—THE TANGIER ZONE.

[W 331/330/28] No. 13.

Mr. Gurney to Mr. A. Henderson.—(*Received January* 10.)

(No. 1. Confidential.)

Sir, *Tangier, January* 1, 1930.

I HAVE the honour to transmit herewith my annual report on the heads of foreign missions at Tangier.

I have, &c.
HUGH GURNEY.

Enclosure in No. 13.

Report on Heads of Missions at Tangier.

[The passages marked with an asterisk (*) are reproduced unaltered from last year's report, and those marked with a dagger (†) are taken from last year's report with emendations or additions.]

**United States of America:* Hon. Maxwell Blake, diplomatic agent and consul-general.

Mr. Blake has been here since 1913 with the exception of the period between 1922 and 1925, which he spent on missions in Australia and Albania. I have found him both as friendly and as outspoken as my predecessor did. His outspokenness is, indeed, often embarrassing, almost equally so whether it leads him to disparage his own country, to laud the characteristics of the British race, or to decry the incompetence of the Spaniards.

He has no wish for his country to adhere to the statute, and he clings tenaciously to the rights derived from the Act of Algeciras. At the same time he disclaims all desire that his "ressortissants" should enjoy a privileged position, and expresses his intention to see that they do not abuse the immunity which they can claim from the enactments of the International Administration. He is not easy to deal with on the Spartel Lighthouse Commission, as he has a rooted dislike of committee meetings, partly perhaps owing to his imperfect knowledge of the French language, which makes it difficult for him to follow or join in our discussions.

He is married to a lady of Gibraltarian origin. (Written in 1927 and 1928.)

**Belgium:* M. Maurice Watteeuw, consul-general since 1925.

He was previously consul-general at Kobe and consul at Sydney. He is jovial and good-hearted, and anxious to avoid rather than create difficulties. Although not clever, he plays quite a useful part in the Committee of Control, and whilst he seldom or never takes the initiative, he usually adopts a fairly sound and conciliatory view on the matters brought before us, although with a bias towards the French point of view.

He is married, and both he and his wife talk excellent English and are fond of golf. (Written in 1927.)

**France:* M. Paul de Witasse, consul-general since December 1926, with personal rank of Minister Plenipotentiary.

M. de Witasse, who is in the French Consular Service and is directly attached to the Administration of the French Zone of Morocco, has spent most of his career in the Near East, having served at Cairo, Genoa, Smyrna and Alexandria. He has also been employed at the residency-general at Tunis, and before coming here had been in charge of the Oudjda district of French Morocco, where he acquired the reputation of an able administrator. He is a pleasant colleague to work with,

combining as he does French wit with a good deal of common sense, and we get on very well together. He seems genuinely anxious to make the statute a success, and not to put French interests unduly in the foreground. He has a difficult colony to deal with, and though he was warmly welcomed by them on arrival I believe that, like his predecessor, he is not now very popular with them.

He is married, and both he and his wife speak fairly good English and are devoted to golf.

He was given the rank of Minister Plenipotentiary in October 1928. (Written in 1928 and 1929.)

**Holland:* M. F. Gerth van Wijk, consul-general since January 1925.

He was previously consul in Moscow, Petrograd and Zurich. As stated by my predecessor, he is a sound and friendly colleague. Though never assuming a prominent part in discussions, he can be relied upon to take a reasonable and unprejudiced view of matters dealt with by the Committee of Control. His business-like and tactful qualities have led to his appointment as representative of the Committee of Control on the Port Commission. He speaks several languages fluently, including English.

He is married to a lady of Italian origin.

He was given the Legion of Honour in 1927 on the recommendation of the French consul-general ostensibly for his services on the Port Commission. (Written in 1927 and 1929.)

†*Italy:* M. D. de Facendis, consul-general since October 1928, with personal rank of Minister Plenipotentiary.

M. de Facendis was Minister at Tehran before coming here, and he had previously served in some consular posts in South America and Albania as well as at the Italian Legation at Athens. He appears to have acquired a reputation for Anglophobia at the latter post, but I have seen no signs of it here, and my relations with him are very friendly.

He is quiet in manner and does not shine particularly in society. He has an agreeable wife.

During 1929, M. de Facendis acted as president of the Committee of Control, and he discharged the duties of that post with considerable tact and efficiency. His ideas are generally sound, and he has shown a conciliatory disposition in dealing with the various problems which have presented themselves. He has throughout displayed a strong desire to work closely with me in opposing any undue increase of influence on the part of France or Spain.

†*Portugal:* M. Gastão Barjona de Freitas, consul-general since June 1928.

M. Gastão Barjona de Freitas, who has been consul-general here since June 1928, left Tangier on the 31st December last to take up the post of Portuguese consul-general in Paris. He is to be succeeded by M. Agapito Rodrigues Pedroso, counsellor of the Portuguese Embassy at Rio de Janeiro.

During the comparatively short time that he has been at Tangier, M. Barjona showed himself a loyal colleague, and I have had reason to modify the somewhat unfavourable opinion which I expressed of him in my previous report. His interventions in the Committee of Control, though infrequent, were latterly, on the whole, rather helpful than the reverse.

Spain: Señor Don Manuel de Figuerola-Ferreti y Marti, Marqués de Rialp, consul-general with the rank of Minister Plenipotentiary since 1929.

M. Pla was succeeded during the year 1929 by Señor Bernardo Almeida y de Herreros, who left Tangier in his turn in September to take up the post of Spanish Ambassador at Lisbon. The Marqués de Rialp, who succeeded him, only arrived on the 29th December, and I have, therefore, not had an opportunity of forming any definite opinion in regard to his capacity. He was previously Spanish Minister at

Mexico, and, according to a report from His Majesty's Minister at that post, he suffers from indifferent health and is reported to be to some extent mentally affected. Contrary to the recent practice in regard to Spanish representatives here, an exequatur has, I understand, been obtained in respect to the Marqués de Rialp as a result of representations made by the French Government.

He is married, but his wife has not yet arrived.

**Sweden:* M. Carlos Dahl, trading consul-general.

As he is not a career consul-general, M. Dahl does not sit on the Committee of Control.

He is of a retiring disposition, and one sees but little of him. (Written in 1928.)

[W 950/199/28] No. 14.

Mr. Gurney to Mr. A. Henderson.—(Received January 28.)

(No. 20.)

Sir, *Tangier, January 18, 1930.*

IN my despatch No. 204 of the 4th December last I had the honour to communicate to you a copy of a statement submitted by the Port Company in regard to the financial questions connected with the construction of the port.

2. This memorandum was communicated to the Commission on Maritime Affairs of the Assembly as well as to the Committee of Control. The commission submitted to the Assembly on the 18th December a motion to the effect that, whilst reserving the question of the future relations between the zone and the Port Company, the Shereefian Government should be asked to guarantee a loan of 40 million francs for the continuation of the works, and that the Protecting Powers should be appealed to for assistance. This motion was referred by the Assembly back to the commission for a further examination of the question.

3. The matter was again brought before the Assembly on the 7th instant, when a motion was adopted to the effect that the zone should contribute 500,000 fr. a year to the service of the proposed loan (*i.e.*, the difference between the 3 million francs maximum established by the Port Agreement and the 2½ million francs already being paid for the service of the Dutch loan of 1928), and that France and Spain should be asked to make up the difference in view of the interest of the French and Spanish Zones in the port. The Committee of Control was also to be invited to consider the question of possible contributions from other Powers which regarded themselves as interested in the development of the Port of Tangier.

4. This motion has not yet come before the Committee of Control, but in view of the fact that the funds at present available will be expended in a couple of months' time, and it is therefore very urgent that a decision should be taken with the least possible delay with regard to the financial measures necessary for the continuation of the port works, I have urged upon my colleagues that we should examine the question at the earliest possible moment. In order that they may have the facts before them I have had circulated through the president of the Committee of Control the memorandum of which I enclose a copy herein, and which, as I explained to them, represents the elements of the problem as I see it.

5. At yesterday's meeting of the Committee of Control I read out the statement of which I also enclose a copy, and in which I have endeavoured to sum up the situation. We decided that the matter should be discussed next week.

6. It will be seen that, whilst the Assembly accept the principle of an additional loan to carry on the works, they would like to limit the contribution of the zone to 500,000 fr. a year. From calculations made by Mr. Dicken, which he confirmed to us at yesterday's meeting of the Committee of Control, when he was present with the Administrator, it would seem, however, that the zone is in a position to furnish a total sum of 4 million francs a year, which, as shown in my memorandum, should be sufficient to cover the greater part of the service of a new loan of 40 million francs if it can be issued at as low a rate as 5½ per cent., in addition to the service of the present Dutch loan. If this is so, it would not be reasonable to call upon the Powers to furnish the substantial amount which the Assembly seem to expect from them.

At the same time it may be difficult to convince the Assembly of the need of putting their hands more deeply into their pockets, and before attempting to do so it seems desirable to see what the Powers, and especially France and Spain, are prepared to do in the matter.

7. So far I have received no definite indications on the subject from my colleagues, who profess not to be aware of the views of their Governments, although my Spanish colleague tells me that he anticipates that his Government will be prepared to assist in the matter.

8. My Italian colleague is most anxious that a special appeal should not be addressed to France and Spain, and he would like to see all the Powers placed on the same footing, although he does not appear to have any precise indication that his Government would be willing to contribute.

9. It will be seen from the motion of which a copy is attached to my memorandum that the Assembly base their appeal to France and Spain on the consideration that the Port of Tangier is destined to serve the western portion of the Spanish Zone and the centre of the French Zone. It seems not unreasonable in view of this consideration that these zones should assist in a certain measure in the construction of the port, and although for political reasons it would, I feel, not be desirable that either zone should contribute alone, there would not appear to be the same objection to accepting some pecuniary assistance from both the zones, provided it does not involve an increase of political influence.

10. As regards contributions from other Powers, I presume it is quite out of the question that any contribution would be forthcoming from His Majesty's Government, and on this supposition I propose to discourage any general appeal to the Powers.

11. My present inclination is not to make any direct request to the French and Spanish Governments, but at the same time to afford an opportunity to their representatives here to submit to the Committee of Control any proposals which they desire to put forward, and, if the Italian representative desires to do the same, not to discourage him from doing so.

I have, &c.
HUGH GURNEY.

Enclosure 1 in No. 14.

Memorandum.

LE Comité de Contrôle a décidé, à la date du 30 octobre 1929, à adresser une lettre à M. l'Administrateur de la zone pour lui prier de demander de nouveau à la Société du Port quelles dispositions elle avait prises ou comptait prendre pour pourvoir au capital nécessaire pour compléter le port selon les dispositions de la convention et du cahier des charges dans le délai prévu par l'article 8 de ce dernier instrument.

En réponse à cette lettre, M. Le Fur a fait parvenir au Comité de Contrôle une note, datée du 22 novembre, qui résume le point de vue de la société sur cette question.

Cette note de la Société du Port avait été remise au service du Contrôle, c'est-à-dire à la Commission du Port, à la date du 12 novembre 1929. La société y demande d'être autorisée par l'Administration de la zone à étudier les bases sur lesquelles un nouvel emprunt pourrait être contracté, et exprime le désir de savoir les limites dans lesquelles la zone voudrait fournir les annuités d'un tel emprunt, dans le cas où le Gouvernement chérifien serait prêt à étendre sa garantie pour rendre possible l'émission par la société d'un emprunt d'une somme effective d'environ 30 millions de francs.

Comme elle le fait observer, la construction et l'exploitation du port ont été concédées par le Gouvernement chérifien à la Société du Port par une convention signée en 1921. Cette convention a été modifiée en 1924 à la suite d'une réunion d'experts qui s'est tenue à Paris en 1923 au moment de la négociation du Statut de Tanger. Par l'article 40 de la convention du 18 décembre 1923 relative à l'organisation du Statut de la Zone de Tanger, le Gouvernement chérifien avait délégué à la zone les droits et charges qu'il tenait du contrat de 1921, et l'objet

principal des amendements apportés en 1924 à ce contrat fut de donner effet à cette transférence.

Les travaux envisagés dans l'acte de concession que la société s'est engagée à exécuter furent, comme le fait observer la société dans sa note, évalués par les experts en 1924 à environ 45 millions de francs. Il est toutefois à remarquer à ce propos que l'expert britannique a fait ressortir dans un rapport qu'il a fait à son Gouvernement qu'il était convenu par ses collègues qu'il fallait compter sur une augmentation de 10 à 15 pour cent. sur ce chiffre, ce qui aurait apporté les dépenses totales à environ 51 millions de francs.

Pour couvrir ces frais on comptait d'abord sur le capital-actions de la société de 7½ millions, et sur le produit d'un emprunt qui devait être garanti par le Gouvernement chérifien d'un capital effectif de 31 millions, dont le service devait, d'après l'article 40 de la convention du 23 décembre 1923, être fourni par la Zone de Tanger " par prélèvement en priorité sur les produits des douanes et les bénéfices de l'exploitation et des terrains du port."

La différence entre ces sommes et le total des dépenses devait être couverte en première ligne de compte par les sommes à payer par la Compagnie du Chemin de Fer pour acquisition ou occupation des terrains de la concession du port, les recettes nettes de l'exploitation provisoire, et le produit du placement des fonds disponibles sur les versements du capital-actions. Si ces recettes ne suffisaient pas, il incombait à la société à combler le déficit par une augmentation de son capital-actions.

La Société du Port s'est engagée en outre à exécuter l'ensemble du projet du port dans un délai de cinq ans à compter du jour de l'approbation du premier des projets d'exécution.

Un contrat pour la construction d'une première tranche de ce projet fut passé avec la Société nationale de Travaux publics à la date du 15 décembre 1924, par suite d'une adjudication, la société s'étant engagée de son côté à terminer les travaux ainsi adjugés dans le même délai de cinq ans.

Ce contrat fut remplacé par un accord passé entre la Société du Port et la Société nationale de Travaux publics le 24 mars 1928, par lequel les travaux devaient être exécutés à l'avenir par les deux sociétés en participation, cette dernière ayant fait valoir qu'elle n'était pas en mesure de continuer les travaux sur la base primitive.

Les travaux furent dûment commencés au début de 1925, mais ils sont encore loin d'être terminés.

D'après un calcul cité par la Société du Port, le coût de la tranche ainsi adjugée s'élèvera, aux prix du 1er janvier 1929, à une somme de 60,300,000 fr., tandis que selon l'estimation primitive ces travaux ne devaient coûter que 28,900,000 fr. D'après le même calcul, tous les travaux d'infrastructure concédés à la société, qui étaient évalués à 33,800,000 fr. en 1924, coûteraient, sur la base des prix du 1er janvier 1929, 70,000,000 de francs.

La société attribue cet excédent à la baisse de la valeur du franc, et le considère comme un cas de force majeure, dont elle ne peut être rendue responsable.

Elle admet que, d'après la lettre de l'article 7 de la convention, elle était tenue à prendre à sa charge tout dépassement des ressources affectées aux travaux du projet approuvé, mais elle fait valoir qu'il n'a pas été l'intention des parties contractantes que la société devrait fournir une si forte somme que 36 millions par une augmentation de son capital-actions de 7½ millions, et que la disposition précitée ne visait que le petit aléa entre les ressources assignées et les dépenses prévues en 1924.

Du reste, ainsi qu'elle le fait remarquer, les ressources accessoires, telles que les paiements du Tanger–Fez, l'exploitation provisoire du port et le produit des terre-pleins qu'on avait l'intention de construire, ne doivent procurer qu'un appoint moindre que ce qu'on avait prévu.

La société cite enfin une réserve qu'elle a faite en 1923 en ce qui concernait une augmentation des prix, et elle termine en demandant la bonification de l'annuité de la zone pour lui permettre de négocier un nouvel emprunt d'un minimum de 30 millions de francs effectifs pour compléter les travaux adjugés.

La Commission du Port a examiné cette note à sa séance du 14 novembre et elle s'est décidée à transmettre la demande de la société à l'Administration en lui faisant observer qu'elle n'avait pas qualité pour prendre une décision, et que la question la dépassa.

Il est à retenir toutefois qu'au cours de la discussion, il fut constaté par l'Ingénieur des Travaux publics d'Etat qu'une somme de l'ordre de 40 millions serait nécessaire pour achever le programme de concession, et que le délégué du Gouvernement chérifien a déclaré qu'il était autorisé à dire que ce Gouvernement donnerait sa garantie pour l'emprunt envisagé par la société.

La note de la société a été communiquée par la suite à la Commission des Affaires maritimes de l'Assemblée législative et cette commission a à son tour porté la question devant l'Assemblée, en lui soumettant une motion qui a été adoptée à la date du 18 décembre dans la forme suivante :

" *Pour le passé:*

" Réserver la question des rapports de la zone avec la Société du Port et des conditions dans lesquelles elle a satisfait aux charges et obligations de la concession.

" *Pour l'avenir:*

" Réserver la question de savoir qui achèvera la construction du port.

" *Pour le présent:*

" 1. Demander au Maghzen de garantir l'emprunt de 40 millions qui, pour le moment, est considéré comme nécessaire pour continuer les travaux du port.

" 2. Décider que les démarches nécessaires seront d'ores et déjà entreprises pour solliciter d'abord à cet effet l'aide des Puissances protectrices."

L'Assemblée a décidé ensuite à renvoyer cette motion à la commission pour servir de base à l'étude des modalités, conditions, garanties, &c., de l'opération de crédit estimée nécessaire, et que ce renvoi soit accompagné d'une recommandation à l'effet que dans l'intérêt de la zone la commission fasse cette étude du point de vue purement économique et en mettant de côté toute considération politique.

L'affaire a été de nouveau portée devant l'Assemblée à sa séance du 7 janvier et l'Assemblée a adopté à cette occasion une motion, proposée par les Commissions des Finances et des Affaires maritimes, dont le texte se trouve annexé à ce mémorandum.

L'intention de l'Assemblée n'est pas très claire, mais il ressort au moins de la motion qu'elle admet le principe d'un nouvel emprunt, qu'elle est prête à contribuer avec 500,000 fr. par an au service d'un tel emprunt, et qu'elle se remet au Comité de Contrôle en ce qui concerne une demande à adresser aux Puissances à compléter les charges de l'emprunt.

Pour élucider le problème qui se présente, il importe avant tout d'examiner la situation de la société.

Il est d'abord à constater que, quoique la partie concédante ait rempli ses obligations, notamment en garantissant l'emprunt de 31 millions, qui fut dûment émis en 1927, et dont le service est actuellement fourni par l'Administration internationale, la société de son côté a manqué à son engagement à compléter les travaux spécifiés dans l'acte de concession dans le délai prévu, et ne paraît avoir fait aucun effort pour parfaire les sommes nécessaires à la construction du port. Elle s'est en effet contentée de signaler à la Commission du Port l'insuffisance de la somme précitée de 31 millions. Il paraîtrait, en outre, qu'elle n'a pas encore rempli ses obligations sous l'article 3 de la convention, d'après lequel le capital-actions devait être entièrement versé au plus tard quand le montant total des travaux exécutés aurait atteint 30 millions de francs, ce qui doit être bientôt le cas.

Il est vrai que, comme le représentant de la Société du Port l'a fait remarquer à la Commission du Port à sa séance du 14 novembre, des modifications ont été apportées au projet primitif d'accord entre la société et la commission, et que ces changements auraient pu donner lieu à une extension du délai. Il est toutefois également vrai qu'une telle extension n'a pas été demandée par la société et que celle-ci pourrait ainsi être tenue à l'accomplissement des dispositions de l'article 8 qui impose le délai de cinq ans.

D'après une stricte interprétation de la convention, la société pourrait également être tenue à fournir tout l'argent nécessaire pour compléter les travaux selon les projets qu'elle a acceptés.

Il faut toutefois admettre qu'il y a une certaine force dans les arguments qu'elle a avancés pour démontrer que la situation a changé radicalement depuis la signature de la convention, et que, quelle que soit la situation juridique, il ne serait sans doute pas raisonnable de tenter de la forcer à trouver les sommes considérables en question, ce que, du reste, elle ne serait pas en mesure de faire.

D'un autre côté, la Zone de Tanger a tout intérêt à ce que le port soit complété dans le plus bref délai possible. Il ne serait nullement à son avantage de faire déclarer la déchéance de la société, ni que celle-ci abandonne le contrat. Elle est en

effet tout outillée pour continuer et pour achever les travaux, qu'elle semble avoir menés consciencieusement, au moins du point de vue technique, jusqu'aujourd'hui et on devrait plutôt chercher moyen de lui venir en aide.

Si elle y consent, l'Administration internationale aurait toutefois le droit d'imposer ses conditions. Elle pourrait par exemple demander d'abord à la société quel effort elle compte faire de son côté—à quel point serait-elle prête à augmenter son capital-actions?

Comme il est dit plus haut, ce capital-actions fut primitivement fixé à 7½ millions de francs, mais d'après le raisonnement de la société elle-même il est évident que cette somme ne suffit plus.

D'après l'article 7 de la convention, la société devrait supporter seule la charge de la superstructure et fournir le fonds de roulement fixé à un million de francs. Selon les chiffres cités par la société dans sa note, les travaux de superstructure étaient évalués en 1924 à 4,200,000 fr. Or, si le coût de construction a doublé depuis cette date, comme le prétend la société, une augmentation du capital sera nécessaire pour faire face à cette obligation, sans tenir compte de la contribution que la société devait apporter aux frais généraux de construction.

L'Administration pourrait également insister sur une augmentation de sa participation dans la répartition du produit net de l'exploitation ainsi qu'elle est prévue à l'article 10 de la convention.

Il y a sans doute d'autres conditions qui pourraient être prises en considération, et qui pourraient être spécifiées dans un avenant à la convention. Un avenant sera en tout cas nécessaire si l'Administration consent à modifier la convention pour faire face à la nouvelle situation. Elle devrait prévoir entre autres choses un nouveau délai de construction, ainsi que la modification, s'il y a lieu, du projet de construction, qui devrait dans tous les cas être soigneusement examiné, pour fixer les meilleures lignes à suivre et l'ordre de priorité dans la construction.

Une fois accepté le principe d'une augmentation de la contribution de la zone, il faudrait examiner la forme sous laquelle cette augmentation pourrait être consentie.

La convention n'a prévu comme contribution de la partie concédante que la garantie d'un emprunt, strictement limité à un montant effectif de 31 millions, dont le service devait être fourni par la zone et qui ne pouvait pas dépasser 3 millions de francs par an. Aucune autre contribution n'est prévue, sauf dans le cas où l'on déciderait à exécuter les travaux complémentaires à ceux qui sont détaillés à l'article premier du cahier des charges (voir dernier alinéa de l'article 2 du cahier des charges).

Il serait donc à examiner si l'Administration aurait intérêt à suivre la même voie qu'auparavant et à laisser à la société le soin de négocier et d'émettre l'emprunt nécessaire, dont la zone assumerait seulement les charges, ou s'il serait préférable d'entreprendre ces opérations elle-même et pour son propre compte.

Dans tous les cas, on aurait sans doute besoin de la garantie du Gouvernement chérifien, sinon des autres Gouvernements intéressés au sort de Tanger, et il est heureux de constater que le Gouvernement chérifien y a donné son consentement d'avance.

Quant au montant de l'emprunt, l'Ingénieur des Travaux publics d'Etat a évalué à 40 millions la somme nécessaire pour achever le programme de concession, et, même si on pouvait compter sur des ressources provenant d'une augmentation du capital de la société, il serait sans doute prudent d'envisager un emprunt de cet ordre. Il est possible, et même probable, que cette somme ne suffira pas pour doter Tanger d'un port vraiment effectif, mais on pourrait laisser de côté pour le moment la possibilité d'une extension du brise-lames et se contenter de rester dans les limites des travaux déjà concédés par la convention.

Sous quelles conditions pourrait-on emprunter une telle somme?

L'emprunt de 31 millions qui fut émis aux Pays-Bas, en 1928, au prix de 96, porte intérêt à 7 pour cent, et les charges annuelles se chiffrent pour les années 1930–37 à environ 2,500,000 fr.

Il est à croire qu'au moment actuel, on pourrait obtenir un emprunt à des conditions plus avantageuses—on parle d'un emprunt à 5½ pour cent ou même à 5 pour cent.

Est-ce que la zone serait en mesure de prendre à sa charge le service d'un tel emprunt?

D'après des calculs faits à ce sujet, le service d'un emprunt de 40 millions à 5½ pour cent, amortissable en 60 ans, sans impôt, se chiffrait à 2,292,400 fr. En y

ajoutant ces charges, qui supposent l'amortissement du nouvel emprunt dès le commencement, à celles de l'emprunt hollandais, appelées à varier dès 1938, on obtiendrait un chiffre de 4,792,400 fr. à figurer aux budgets annuels entre 1930 et 1938.

En 1938, il deviendra possible de convertir l'emprunt hollandais, et, si on obtenait les mêmes conditions de taux de 5½ pour cent pour l'emprunt de conversion, l'amortissement en 60 ans se terminant avec la concession en 1999, la charge totale des deux emprunts, amortissement et intérêt compris, mais pas impôts, serait approximativement 4,240,940 fr. par an.

D'après les mêmes calculs, on met à 4 millions la somme dont la zone pourrait disposer pour les services des deux emprunts, si on acceptait la taxe des patentes, qui est d'ailleurs prévue au statut, et si la zone ne devrait pas assumer de nouvelles charges.

En supposant que l'emprunt de 40,000,000 de francs fût réalisé le 1er juillet 1930, amortissable immédiatement, à 5½ pour cent sans impôts, il y aurait, même en déduisant le produit des capitaux en dépôt, une insuffisance à partir de l'année 1931, qui, de 100,000 fr. pour cette année, s'élèverait à 800,000 fr. en 1934, lorsque les 40 millions auront probablement été dépensés, jusqu'en 1938, quand elle retomberait à 200,000 fr., si le rachat de l'emprunt hollandais ait lieu dans cette année.

L'insuffisance des années 1931–37 se chiffrerait ainsi à un total de 4,400,000 fr., si on se base sur un total disponible de 4 millions par an, et ne tient pas compte d'une augmentation possible, et même probable, des recettes de la zone.

Pour atténuer la difficulté, on pourrait très bien différer l'amortissement du nouvel emprunt jusqu'en 1939. Dans ces conditions, on n'aurait à payer que les intérêts de 5½ pour cent qui avec le service de l'emprunt hollandais, se chiffrant de 1930 à 1938 à 2,450,000 fr., donnerait un total de 4,650,000 fr. par an, sans tenir compte des intérêts sur les sommes déposées.

On pourrait aussi augmenter le nouvel emprunt d'une somme de 3 ou 4 millions de francs de façon à y prélever les insuffisances budgétaires pendant la période critique de 1932 à 1938.

D'après cet exposé, il semblerait que l'Administration internationale serait en mesure de fournir au moins une très grande partie du service d'un emprunt qui pourrait être contracté à un taux qui n'excéderait pas 5½ pour cent.

L'Assemblée internationale a toutefois adopté une motion, comme il est dit plus haut, d'après laquelle la zone ne contribuerait qu'avec 500,000 fr. à ce service, et demanderait aux Puissances de parfaire la différence, en faisant valoir que Tanger est le port commercial de la Zone occidentale espagnole et de la Zone centrale française.

Enclosure 2 in No. 14.

Motion adoptée par l'Assemblée le 7 Janvier 1930.

LA zone contribuera avec 500,000 fr. par an aux services de l'emprunt projeté de 40 millions, et ce pour parfaire la différence entre la somme de 2,500,000 fr., montant des services de l'emprunt de 34 millions déjà contracté, et la charge de 3 millions qui, aux termes de la Convention du Port, constitue le maximum auquel la zone est tenue de pourvoir.

2. Les Puissances qui contribueront à compléter les charges de l'emprunt projeté pourront obtenir:

(*a.*) Le droit d'être représentées au sein de la Commission du Port;
(*b.*) Le droit de faire porter au compte d'exploitation définitive du port (article 9 de la convention), et à due concurrence du produit de cette exploitation, le montant des charges effectives que représentent les intérêts et l'amortissement de l'emprunt de 40 millions.

3. Considérant que la zone doit s'adresser aux Puissances plus directement intéressées, du point de vue économique, au port de Tanger;

Considérant que Tanger est le port commercial de la Zone occidentale espagnole et de la Zone centrale française;

L'Assemblée décide de proposer qu'il soit demandé aux Puissances, assumant la responsabilité économique desdites zones—l'Espagne et la France—de contribuer à compléter le montant des charges résultant du nouvel emprunt.

4. L'Assemblée, saisie d'une suggestion relative à la contribution possible des autres Puissances, qui peuvent s'estimer intéressées au développement du port de Tanger, propose de s'en remettre au Comité de Contrôle pour prononcer à ce sujet et quant au principe et quant à la procédure d'application, en insistant, toutefois, pour que la suite à donner à cette suggestion ne retarde pas la solution considérée comme urgente pour la tranche du projet actuellement en construction.

Enclosure 3 in No. 14.

Statement.

JE pourrais résumer ainsi ma manière de voir :

Les 31 millions mis à la disposition de la Société du Port seront dépensés dans un mois ou deux.

Il faut encore au moins 40 millions pour achever les travaux selon les plans primitifs.

Quoique la société n'ait pas rempli ses obligations, il faut admettre qu'on ne peut pas compter sur elle pour fournir ces 40 millions et que, si on veut compléter le port, ce qui semble indispensable dans l'intérêt de la zone, il faut que la partie concédante, c'est-à-dire l'Administration internationale, lui aide à procurer les fonds nécessaires, tout en imposant ses conditions. Le Gouvernement chérifien a fait dire de son côté qu'il est prêt à garantir un nouvel emprunt.

L'état financier de la zone lui permettrait, semble-t-il, de fournir une somme totale annuelle de 4 millions de francs pour couvrir le service d'un nouvel emprunt en même temps que celui de l'emprunt hollandais.

Cette somme suffirait pour fournir la plus grande partie du service d'un emprunt additionnel de 40 millions, si on pouvait l'émettre à un taux qui n'excéderait pas 5½ pour cent, tandis que le reliquat pourrait au besoin être couvert par une addition à l'emprunt.

Néanmoins, l'Assemblée, en admettant le principe d'un nouvel emprunt, ne s'est montrée disposée à contribuer à son service que jusqu'à 500,000 fr. par an, en faisant appel aux Puissances pour le reste.

La motion de l'Assemblée sera examinée lorsqu'elle aura été communiquée officiellement au Comité de Contrôle.

Entre-temps, pour que nous puissions mettre nos Gouvernements au courant de la réelle situation des choses, je le trouve indispensable que nous recueillions tous les renseignements utiles sur les ressources financières auxquelles on peut avoir recours, et je propose que nous ouvrions tout de suite une enquête à ce sujet.

[W 1369/199/28] No. 15.

Mr. Gurney to Mr. A. Henderson.—(*Received February* 7.)

(No. 29.)

Sir, *Tangier, January* 30, 1930.

I HAVE the honour to report that the Committee of Control discussed at its meeting on the 25th instant the motion in regard to the port which was enclosed in my despatch No. 20 of the 18th instant.

2. In this motion the Assembly admitted the principle of a new loan of 40 million francs, and of a contribution by the zone towards the service of such loan to an extent of 500,000 fr. a year. They offered a seat on the Port Commission to such Powers as might contribute towards the completion of the charges, and recommended that France and Spain, as the Powers which had assumed an economic responsibility for the French and Spanish Zones, should be asked to make such contribution whilst leaving it to the Committee of Control to consider approaching other Powers with a similar request.

3. In discussing this motion, I pointed out that the Assembly was overstepping the limits of its competence in offering to increase the number of seats on the Port Commission in favour of Powers contributing to the service of the proposed loan, as such increase would be contrary to the provisions of the statute, but I expressed my concurrence in the principle of a new loan of 40 million francs, and I stated that

I saw no alternative to the assumption by the zone of the service of such loan. I recalled the fact that Mr. Dicken had expressed the opinion that the zone could contribute up to 3,300,000 fr. a year without having recourse to the *patente taxe*, that the service of the two loans up to 1938, if the new loan could be issued at 5½ per cent. and the operation of a sinking fund were postponed until 1939, would amount to some 4½ million francs, and that the difference between these two sums could, if necessary, be made up by the imposition of the *patente taxe*, which was estimated to bring in 700,000 fr. a year, and an increase in the loan itself. This tax had, however, already once been rejected by the Assembly and would be very unpopular, and it would not seem unreasonable that this resource should be left to the zone for the execution of other necessary public works. An arrangement would therefore, in my opinion, be welcome under which the contribution of the zone should be limited to the 3,300,000 fr. above mentioned. It seemed to me not unnatural that the neighbouring zones, which must benefit from the port, should contribute in some measure to its construction, and, before examining other solutions, I considered it desirable to ascertain to what extent these zones would be prepared to assist the Tangier Zone in the matter. I therefore proposed that we should ask our French and Spanish colleagues to ascertain the attitude of their Governments, and, in response to a proposal from my Dutch colleague, I agreed that a similar enquiry might be addressed to the other Governments interested by their representatives. My colleagues concurred in these proposals and adopted a motion to this effect, of which I enclose a copy herein.

4. None of my colleagues appear so far to have received any information as to the views of their Governments. M. de Witasse, my French colleague, tells me that he has addressed various communications to Paris on the subject, and has suggested that one way in which the Protectorate might assist Tangier would be by agreeing to the suspension by the zone of its contribution towards the service of the 1904 and 1910 loans. He told me that it would be very difficult to get the Protectorate Government to make any direct contribution, particularly in view of the fact that the development of the port of Tangier is regarded in some sections of the Protectorate as being inimical to their interests, and the suggested arrangement would obviate the necessity for such direct contribution. As you are aware, although the contribution of the zone to the service of these loans was provisionally fixed by the statute at 500,000 fr., the actual amount has not yet been precisely assessed, and is likely to be in the neighbourhood of 1,200,000 fr., a sum which has hitherto been set aside annually for the purpose. A solution of this nature would seem to be a satisfactory one provided the French Government did not attach to it too onerous conditions.

5. As regards a contribution from the Spanish Zone, it has occurred to me that it might take the form of a renunciation of their claim to a proportion of the 2½ per cent. *taxe spéciale* levied on goods landed at Tangier and passing to the Spanish Zone. It is true that, according to the contention of His Majesty's Government, the Tangier Zone is entitled to claim the right to retain this sum in any event. As you are aware, however, the Spanish Government have shown very great reluctance to give way on this point, and it would seem that a suggestion that they should contribute in this way to the construction of the port might facilitate a satisfactory solution of this question. The sum at present involved amounts to some 300,000 fr. a year. I have so far abstained from making a direct proposal in this sense to my Spanish colleague, but I have put it forward to M. de Witasse, who welcomed the idea and will, I think, communicate it to the Marqués de Rialp. He has already informed the Committee of Control that the French authorities are prepared to waive their claims to any share of the tax.

6. As regards the attitude of the Italian Government, my Italian colleague tells me that he does not anticipate that they will desire to contribute in any way to the service of the loan. They might, however, like to make provision for some form of Italian participation in the loan itself.

7. The question of the method of issuing the loan has not yet been tackled, but I have asked M. de Witasse to endeavour to ascertain whether he can confirm the view which he expressed to me some time ago that it might be possible to issue such a loan in Paris at a rate not exceeding 5½ per cent.

8. I shall be glad if I may be favoured in due course with any intimation which you can give me as to the attitude of His Majesty's Government in this matter. I presume that there can be no question of any pecuniary assistance on their part.

9. I also presume that it is not likely that any British bank or financial house would be interested in a new Port Loan. I would refer in this connexion to a letter

which Sir E. Crowe addressed to me on the 7th April, 1928, and which, he stated, was being communicated to your Department. In this letter he stated that there was probably no way in which such loan could be made an acceptable financial proposition except by a guarantee of the Powers interested in maintaining the international political status of the Port of Tangier.

10. I should add that, although 40 millions is estimated to suffice for the completion of the first part of the port works as originally planned, it seems probable that it will be necessary to extend the breakwater in order to provide adequate shelter, and that a further loan will have to be negotiated for this purpose in some four years' time, when the 40 millions will in all probability have been expended.

I have, &c.
HUGH GURNEY.

Enclosure in No. 15.

Motion adopted by Committee of Control, January 25, 1930.

LE Comité de Contrôle décide de prier les représentants d'Espagne et de France de demander à leurs Gouvernements s'ils sont disposés à aider la Zone de Tanger à fournir le service d'un emprunt supplémentaire pour les travaux du port, étant entendu que les représentants des autres Puissances prendront également auprès de leurs Gouvernements des renseignements sur leur attitude à cet égard.

[W 1369/199/28] No. 16.

Foreign Office to Treasury.

Foreign Office, February 20, 1930.

Sir,

I AM directed by Mr. Secretary Henderson to transmit herewith, for the consideration of the Lords Commissioners of His Majesty's Treasury, copies of three despatches* from His Majesty's consul-general at Tangier in regard to the steps which are being taken by the International Administration to arrange for a further loan to the Tangier Port Company.

2. If the French and Spanish Governments agree to contribute to the service of the new loan it is probable that they will thereby be able to strengthen their political and economic position at Tangier, and the position of this country will correspondingly be weakened. Nevertheless, the Secretary of State doubts whether this consideration is of sufficient importance to warrant an offer by His Majesty's Government to contribute to the service of the proposed loan. He will be glad to learn whether the Lords Commissioners concur and whether they have any general observations to offer for Mr. Gurney's guidance.

3. A similar letter is being addressed to the Board of Trade.

I am, &c.
C. HOWARD SMITH.

[W 1906/199/28] No. 17.

Mr. Gurney to Mr. A. Henderson.—(Received February 21.)

(No. 38.)

Tangier, February 13, 1930.

Sir,

WITH reference to my despatch No. 194 of the 7th November last, I have the honour to transmit herewith the copy of the "Bulletin officiel" containing the text of the budget for 1930 as passed by the Assembly on the 9th December and approved by the Committee of Control on the 28th of that month.†

2. In the course of the proceedings the Assembly increased the estimated expenditure by 969,458 fr. and reduced the estimated revenue by 20,000 fr., so that the budget as passed balances at 24,423,500 fr. (about £206,700) and provides for a surplus of only 73,931 fr., instead of the estimated surplus of 1,063,389 fr.

* No. 204 of Part 65; and Nos. 14 and 15, *supra*.

† Not printed.

3. The increase in the estimated expenditure is largely due to the vote of half a million francs for the execution of certain public works, the cost of which would normally be defrayed out of the reserve fund. The action of the Assembly in voting these sums, and so doing away with the surplus, was taken with the deliberate intention of giving the impression that the financial position of the Administration is worse than it is, and in the hope of enlisting the sympathy of the Powers with a view to invoking their assistance in financing the Port works.

4. To take first the receipts—those from the *taxe urbaine* are put at a slightly lower figure than in 1929 (2 million francs, as compared with 2,100,000 fr. last year) as there are now less arrears to collect.

5. The customs which, with the *taxe spéciale*, provide about half the total revenue, show an increase of a little over a million francs (10 million francs, as compared with 8,869,000 fr.), an estimate which is based on the receipts for 1929. The 10 million francs put down in the estimates on this account represent the net amount received by the zone after deduction of the share payable to the Spanish Zone in respect to goods landed at Tangier and forwarded to that zone. The sum so payable last year amounted to about 1,500,000 fr., or 12·60 per cent. of the total, as compared with 25 per cent. payable under the old arrangement, which was negotiated with the Spanish Zone in 1926 and remained in force until 1928, when it was modified to the advantage of the Tangier Zone.

6. A corresponding increase of nearly 300,000 fr. is anticipated to accrue from the *taxe spéciale* of 2½ per cent. which is levied on all imports, in addition to the customs duty of 10 per cent.

7. Under the arrangement quoted above, the amount of the *taxe spéciale* levied on goods landed at Tangier and forwarded to the Spanish Zone is refunded to that zone in the same way as its share of the customs duty. It has, however, always been maintained by the Tangier Zone that this should properly be retained by it, and it was laid down in the customs arrangement that the matter was to form the subject of subsequent negotiation, or, failing an agreement, by arbitration by The Hague Court. Negotiations have not yet been undertaken on the subject, but the question was again raised in the Assembly when this item came up for examination, and the Administration were requested to expedite a settlement. The Committee of Control consequently requested M. le Fur, the Administrator, who was present with the Director of Finance when the budget was under discussion, to take the matter up with the authorities of the Spanish Zone, and we, at the same time, requested our Spanish colleague to pave the way for friendly negotiations. We also took note of the fact that the French consul-general informed us that the Protectorate Government were ready to waive all claims to any proportion of the tax levied on goods landed at Tangier and passing to the French Zone.

8. The sum paid to the Spanish Zone last year on this account amounted to 406,000 fr., a sum which is not large in itself but is of importance in a budget of the size of that of Tangier.

9. The *taxes de consommation* show a decrease of some 700,000 fr., 400,000 of which are on account of the duty on alcohol. This decrease is attributed partly to the fact that the duty on alcohol was increased by 50 per cent. last year and partly to a falling off in the amount of alcohol imported into the Spanish Zone. An enquiry is being instituted as to the best method of increasing the revenue from alcohol, and the question of establishing distilleries at Tangier is also being examined.

10. The 15 per cent. duty on tobacco, which was instituted last year, is estimated to produce a million francs in the coming year. On the other hand, the receipts from the tobacco monopoly are expected to show a decrease of some 300,000 fr. on account of the decrease in consumption which must result from this increase in the duty.

11. The question was raised in the Assembly as to whether the zone received its full share of the profits derived by the State bank from its monopoly of the issue of notes. It was pointed out that, whilst 7 millions were paid by the bank to the French Zone, only 70,000 fr. were payable to Tangier, a sum which was regarded as inadequate. When the question was brought up in the Committee of Control, the Administrator informed us that it was questionable whether the zone had any right to a share in these profits, and that if the matter were pressed, it was possible that the zone would receive no payment at all on this account. Mr. Dicken, however, tells me that he considers the claim of the zone to be a good one.

12. As regards the municipal receipts, it may be mentioned that the question was raised in the Assembly of negotiations with the other zones for an arrangement under which goods on which the *droits de porte* had been paid on entry into Morocco

would be free from similar payments in other towns. It is hoped that the question will be discussed at an interzonal meeting which is to take place at Tetuan early this year, but M. le Fur anticipates that it will not be easy to arrive at an understanding in the sense desired.

13. The only other item of receipts which was reduced by the Assembly below the estimate submitted by Mr. Dicken was that covering the dues hitherto payable by prostitutes in respect to their medical examination. It was decided that, in future, this examination should be made gratis. I may mention in this connexion that I have suggested to M. le Fur that the whole question of prostitution should be examined by the Administration and that a report should be prepared on the subject with a view to meeting any possible enquiry which may be addressed to them by the League of Nations Commission.

14. As regards expenditure, although a sum of 1,200,000 fr. is annually set aside on account of the share of Tangier in the service of the 1904 and 1910 Loans, so far only 500,000 fr. has been paid every year on this account pending a settlement of the precise sum due, which is, under article 21 of the convention, to be based on the ratio borne by the customs receipts collected by the zone to the aggregate of the receipts collected in the ports of the other zones of Morocco during the preceding year. The delay in settling the question is due to the fact that the necessary figures have not yet been produced for the Spanish Zone. It is naturally not in the interest of the Tangier Zone to press for a settlement as the amount which is set aside annually to meet the obligation produces a certain amount of interest.

15. The sum payable on account of the Committee of Control has been increased from 15,000 to 25,000 fr. My colleagues represented that it was reasonable that a proportion of the cost of the clerical work connected with the committee should be borne by the zone and not fall exclusively on the office of president or the French consulate-general, whose staffs have hitherto done all the typing, &c., required. I was alone in opposing a demand for an increase in the vote on this account, but I ultimately agreed that we should ask the Administration to lend the president a typist for such hours as she might be required. When the matter came before the Finance Commission, they preferred to propose the above-mentioned increase in our grant, which was voted without comment by the Assembly. In the circumstances, I felt that it would serve no useful purpose to continue my opposition, and I agreed to the acceptance of the increase, though I did so with reluctance. The question was raised last year on account of the fact that the Dutch consul-general, who has now become president of the Committee of Control, has no regular clerical staff.

16. The vote in regard to the Mixed Court has been somewhat rearranged in view of the appointment of an Italian Assistant Administrator in charge of Judicial Services, and the vote now includes the cost of official publications and prisons, the superintendence of which is included in the duties of the Assistant Administrator.

17. Provision is also made in this chapter for the salary of the new Italian judge, whilst 150,000 fr. are set aside to provide for the establishment of a court of appeal.

18. In the course of the discussion of the vote for the Mixed Court, attention was called to the excessive cost of the administration of justice in proportion to the European population. I have dealt with this question in a separate despatch.

19. The vote for General Administration includes a new item of 30,000 fr. for *frais de représentation*. This vote gave rise to a good deal of discussion in the Finance Commission. It was proposed at one time that not only the Administrator but also the Assistant Administrators should receive representation allowances. This was, however, opposed by Mr. Dicken, who pointed out that it was most undesirable that the Administrators should receive such an increase in their emoluments at a time when complaints were being made of the insufficiency of the salaries of all the functionaries of the zone. I myself discussed the matter with some of the members of the commission, and it was eventually decided to postpone the question until the general question of salaries had been dealt with. It was made clear in the Assembly that the sum now voted is placed at the disposal of the Administrator as *frais de représentation de la zone*, and is not intended to cover the cost of his private entertaining.

20. The budget of the zone contains the usual provision of 1,500,000 fr. only for the gendarmerie. Two separate budgets for the gendarmerie have, however, been prepared, one for the first four months of the year 1930, during which, according to the terms of the protocol, the force must be maintained at the present strength of 400 men, and another for the subsequent period when the number will be reduced to 250. The estimates amount to 1,580,105 fr. and 1,693,525 fr. respectively, making

a total cost of 3,273,633 fr. It will be recollected that under the protocol it was provided that the French and the Spanish Governments were to defray the whole of the charges for the gendarmerie in excess of 1½ million francs for the first period of twelve months, during which the force was to be maintained at 400 men. They are consequently bound to make good the difference between the 500,000 fr. chargeable to the zone for the first four months of the year and the actual expenditure which, as stated above, is estimated at 1,580,105 fr. After this period, when the force is to be reduced to 250, the contribution of each Government is limited to 350,000 fr. a year. The total estimated annual cost for 250 men amounts, however, to about 2,500,000 fr. After deducting the 1,500,000 fr. payable by the zone, this leaves a sum of approximately 1 million francs, which is 300,000 fr. more than the total contribution due from the French and Spanish Governments. When the matter came before the Committee of Control it was decided that the French and Spanish consuls-general should ask their Governments whether they were prepared to make good the deficiency. If not, there will be three possible alternatives: (1) For the Administration to pay the difference; (2) to reduce the strength of the force; or (3) to reduce its pay.

21. The Committee of Control at the same time took note of the fact that, in approving these budgets, the Assembly did so with the reserve that the difference above mentioned should be made up by the French and Spanish Governments.

22. The vote proposed for the customs budget gave rise to some discussion both in the Assembly and in the Committee of Control. As already reported, after the budget was drawn up, a demand was received from the Customs Service for a large increase in salaries, together with a request that the increase should take effect as from the 1st January, 1929. This demand was based on a recent increase of salaries granted to officers of the Customs Service of the French Zone, from which those of the Tangier Zone are recruited. The proposals would have added some 700,000 fr. to the amount voted last year, which was 2,215,000 fr., or an increase of some 33 per cent.

23. The Assembly decided to defer their approval of the customs budget pending the result of negotiations which they asked the Administrator to enter into with the Customs Administration with a view to arranging for a reduction of their demand. They agreed, however, to vote a sum of 2,677,000 fr., *à titre de simple indication*.

24. When the matter came before the Committee of Control, I called the attention of my colleagues to the very high proportion which the expenditure bore to the receipts from the Customs, and I asked that an enquiry should be instituted into the matter. Mr. Dicken, who was present with M. le Fur, admitted that the cost of collection was very high, amounting as it would, if the Customs demands were accepted, to nearly 17 per cent. of the receipts. The Administrator informed us that he was making representations on the subject to the authorities at Rabat, and I agreed that further steps should be postponed pending the receipt of their reply, which the Administrator undertook to communicate to us.

25. A readjustment has been made in the votes for State and municipal public works, inasmuch as the sum of 650,000 fr., which is to be expended in connexion with the water supply, is transferred from the latter to the former vote.

26. Medical assistance and other forms of relief account for 584,000 fr., as compared with 377,000 fr. last year, whilst 160,000 fr. are to be contributed to the Jewish school and the Moorish technical school.

27. The Assembly decided to insert a provision for the expenditure of some 500,000 fr. for the execution of certain works for the improvement, from a sanitary point of view, of two native quarters of the town.

28. This expenditure would normally have been debited to the Reserve Fund, but, as stated in the third paragraph of this despatch, the Assembly was animated by a deliberate intention to reduce the budget surplus to the lowest possible limits with a view to enlisting the sympathy of the Powers for an ostensibly impoverished Tangier.

29. Not content with using up the surplus which Mr. Dicken had provided, the Assembly at a subsequent sitting proceeded to vote 2,500,000 fr. from the Reserve Fund for new public works to be executed in the course of the present year, consisting of roads, bridges and the "assainissement" of certain native quarters. Several of these works cannot be regarded as indispensable, but rather as embellishments of the town which could well be postponed to a later date.

30. Mr. Dicken has been so good as to communicate to me a copy of a letter which he has addressed to the Administration commenting on this vote.

31. In this letter he points out that his original budget provided for a surplus sufficient to cover the demands of the Customs and the proposed increase of salaries, as well as the cost of the new Court of Appeal, and certain sums payable to the water company, and to leave something over for the port.

32. The Assembly had proceeded to vote an additional 120,000 fr. for the Customs, 100,000 fr. for an increase of salaries and 150,000 fr. for the Court of Appeal. These sums were purely arbitrary and would almost certainly be exceeded, but there would have been no harm in voting them if a sufficient balance had been left to provide for their increase. The Assembly had, however, gone on to devote almost the whole of the balance to public works, so that such increase would almost inevitably fall upon the Reserve Fund—contrary to all principles of sound finance—and some 600,000 fr. must be earmarked from the Reserve Fund for that purpose.

33. Further, in order to provide something for the Port Loan, some 700,000 fr. needed for the improvement of the water supply would have to be transferred from the ordinary budget to the Reserve Fund.

34. This made a total of 1,300,000 fr. to be set aside out of that fund.

35. The Assembly had just voted 2,500,000 fr. out of it for public works. This, however, would involve a future expenditure of at least another million to complete the works, whilst a further 400,000 fr. would be required to complete the works of "assainissement" included in the 1930 budget.

36. All these sums added together represented a total of 5,200,000 fr. to come out of the Reserve Fund. To this should be added a further 220,000 fr. required to complete the aerodrome for which provision was made in the 1929 budget, bringing the total up to 5,420,000 fr.

37. This meant that not only would the whole of the Reserve Fund (the "free" portion which amounted at the end of 1929 to 4,300,000 fr.) be exhausted, but that a heavy liability had been incurred chargeable on future surpluses, if there were any.

38. The situation as thus disclosed would be disquieting and afford small prospect of any sums being available for the port were it not for the fact that it will not be humanly possible to expend in one year all the sums voted for municipal public works this year and last. They amount to some 4,030,000 fr. in all, whilst last year the department was only able to spend some 1,900,000 fr.

39. This vote from the Reserve Fund came up for examination by the Committee of Control on the 17th ultimo, when at my request the Administrator and Mr. Dicken were again present in order to explain the situation to us. The explanation they gave was similar to that indicated above, and M. le Fur, whilst pointing out the extent of the commitment thus undertaken by the Assembly, stated that it would in practice probably not be possible to expend all the sums voted, which would in consequence revert to the Reserve Fund and be available for the execution of public works for several years to come.

40. M. de Witasse pointed out how absurd it was that the Assembly should deliberately empty its coffers and then appeal to the Powers, as it was doing, to assist it with the port, but, although we all agreed with him in this, we did not feel entitled to refuse to sanction the measure on this ground.

41. I may mention here that the closed accounts for 1928 as recently approved show a surplus of 3,152,680 fr., which was placed to the Reserve Fund. The revenue actually received amounted to 25,421,984 fr., as compared with the estimate of 27,377,000 fr., representing a decrease of 1,955,015 fr., largely attributable to a falling off in receipts from the Customs and the *taxe spéciale*. This decrease was, however, more than counterbalanced by a reduction in the estimated expenditure, the total of which amounted to 22,269,304 fr., as compared with the estimate of 27,394,706 fr. The economies effected included reductions in the amounts set aside for the service of the 1904 and 1910 Loans, and the Port Loan, the amount payable to the Spanish Zone in respect to duties levied on goods landed at Tangier and forwarded to that zone and the expenditure on the gendarmerie, which was not constituted until last year.

42. The 1929 accounts have not yet been closed, but they are expected to show a surplus of some 3 million francs, due to the non-expenditure of various sums voted by the Assembly.

I have, &c.
HUGH GURNEY.

[W 2719/199/28] No. 18.

Mr. Gurney to Mr. A. Henderson.—(*Received March* 17.)

(No. 47.)

Sir, *Tangier, March* 5, 1930.

IN my despatch No. 29 of the 30th January last I had the honour to transmit copy of a resolution adopted by the Committee of Control to the effect that an enquiry should be addressed to the Powers represented as to whether they were prepared to assist the Tangier Zone to provide the service of a new loan for the completion of the port.

2. I have the honour to transmit herewith copy of a communication which has been addressed to the president of the Committee of Control by my Italian colleague containing the substance of the reply which he has received from his Government on the subject.

3. They state that they intend to claim on the port question the rights to economic equality with the other Powers guarantors of the Statute secured to them by the exchange of notes annexed to the protocol of the 25th July, 1928, and can admit no discrimination between these Powers; that they consider that the Committee of Control ought to have addressed an identic request to all the four guaranteeing Powers, and that the Italian Government are prepared not only to contribute to the service of such a loan, but that they intend, in pursuance of their rights to economic equality, to contribute to an extent not inferior to that of the Power making the highest contribution.

4. In commenting on this communication I would point out, in the first place, that the Committee of Control's motion, which I myself drew up, was purposely worded in such a way as not to admit any preferential position in favour of France and Spain, whilst meeting the wishes of the Assembly, who had asked that a request for contributions should be addressed to those two countries, and affording to other Powers an opportunity of contributing, if they desired to do so, without, however, placing any of them in the embarrassing position of having to decline a direct request.

5. It seemed to me, however, quite reasonable that a special enquiry should be addressed to the French and Spanish Governments, as their zones are naturally more directly interested in the development of the port of Tangier than other countries.

6. As regards the question of a special request being addressed to the four so-called guaranteeing Powers as apart from the other Powers which adhered to the Statute and the protocol, I have hitherto proceeded on the assumption that the adhering Powers have similar rights to the four signatory Powers, and that it is not desirable to make any difference between them in such matters.

7. I have not yet received any definite information in regard to the attitude of the other Governments, but so far as I am aware there is no question at present of any Power making a direct contribution towards the service of the loan, although the French and Spanish Governments are contemplating assisting the zone in other ways.

8. My French colleague, with whom I discussed the matter this morning, tells me that arrangements are practically completed with the Crédit foncier d'Algérie et de Tunisie for the issue of a loan of 42 million francs at 5 per cent. to be taken over by the Administrations of the French and Spanish Zones, who may offer it later to the public. M. de Witasse was rather hazy as to the details of the arrangement, but the idea seems to be that the proceeds of this loan are to be handed over to the zone for the construction of the port in instalments as required, so that the zone will only be responsible for the payment of the interest on the sums actually received and expended, which will probably not exceed 10 million francs a year. He said further that the arrangement contemplated the conversion of the present Dutch loan, when it can be redeemed in 1938, into a loan bearing interest at about 5½ per cent., which would provide for amortisation in sixty years.

9. Under this arrangement the zone would, during the current year, be responsible for a payment not exceeding 3 million francs for the service of both the existing loan and the new loan. This would be increased to some 4 millions at the end of next year, but, according to Mr. Dicken, the Assistant Administrator in charge of Finance, as already reported, this sum will be within the financial capacity of the zone provided the *taxe de patente* is voted.

10. M. de Witasse went on to say that, with a view to assisting the zone further in the matter, a proposal had been put forward to the Spanish authorities for relieving

the Tangier Zone of all responsibility for the service of the 1904 and 1910 Loans, the Tangier share being taken over by the French and Spanish Zones.

11. An arrangement was also contemplated under which the two zones should each contribute 100,000 fr. a year towards the cost of the Customs Administration. As I have already reported, the cost of this administration is at present excessive, amounting as it does to some 17 or 18 per cent. of the receipts, and it is not unreasonable that assistance should be given by the other zones which benefit by the customs service maintained at Tangier.

12. As regards the proposed arrangement relative to the service of the 1904 and 1910 Loans, M. de Witasse said that the French Government would not be prepared to take over the Tangier share of these charges if there was a possibility that they might be largely increased by a decision of the courts to the effect that the service of the 1904 Loan, as well as that of 1910, is payable in gold. As you are aware, an action on the subject was recently brought before the Tangier courts, but was withdrawn on the bankruptcy of the plaintiff, as reported in my despatch No. 33 of the 11th ultimo. There is, however, a prospect that a new action may be introduced, and, according to M. de Witasse, the French Government are anxious to obtain a declaration from the Committee of Control to the effect that in their opinion the International Tribunal would not be competent to hear an action involving the Government of the French Protectorate. As mentioned in the note from the French Embassy enclosed in your despatch No. 194 of the 27th August last, they argue that the words "administration publique," used in article 6 of the annexe to the dahir constituting the Mixed Court, apply exclusively to the International Administration, and they would like the Committee of Control to endorse this view. It was not, he said, desired to bring pressure to bear on the court, but he frankly admitted that the French authorities had a high opinion of the position and influence of the Committee of Control, and felt that an expression of opinion on their part would carry great weight with the court. They therefore attached great importance to the matter, and the proposed arrangement would be contingent on a decision being taken in this sense.

13. I told M. de Witasse that, anxious as I was that the zone should benefit by the generosity of the French and Spanish Governments, which would involve a saving to the Tangier budget of some 1,200,000 fr. a year, and so relieve the zone of all anxiety in regard to the service of the loan, I feared that I might find it difficult to agree to a motion of such a nature, which appeared to me to be outside the competence of the Committee of Control. In any case I could not express any opinion until I had seen the text of the motion which he proposed to submit to us, and I might feel compelled to refer the matter for your consideration.

14. Although it seems not unreasonable to interpret the article in question as suggested, it does not seem to me desirable that the Committee of Control should intervene in any way in a matter which ought to be decided purely on its legal merits, and it is particularly distasteful to me that the question should be put to us in such a way as this. My Italian and Spanish colleagues are inclined to take a similar view of the matter, and we are considering the attitude to be adopted.

15. As regards the new loan of 42 million francs, the proposal seems at first sight to be advantageous to the zone. It is, however, difficult to express a definite opinion until we are acquainted with the conditions which will be attached to it by the French and Spanish Governments. In any case the proposal has, I understand, not yet been approved by the latter Government. My Italian colleague tells me that he thinks it possible that his Government may demand to participate in the arrangement with the French and Spanish Governments, but he has not yet received any definite information on the subject. The Italian Government are evidently most anxious to take some part in the port loan, and M. de Facendis is very insistent on their right to do so under the terms of the exchange of notes annexed to the protocol.

I have, &c.
HUGH GURNEY.

Enclosure in No. 18.

Italian Consul-General to the President of the Committee of Control.

M. le Président et cher Collègue, *Tanger, le 3 mars* 1930.

DANS la séance du 25 janvier dernier, notre comité a décidé de prier les représentants d'Espagne et de France de demander à leurs Gouvernements s'ils étaient disposés à aider la Zone de Tanger à fournir le service d'un emprunt supplémentaire pour les travaux du port, étant entendu que les représentants des autres Puissances auraient pris également auprès de leurs Gouvernements des renseignements sur leur attitude à cet égard.

En réponse, le Gouvernement royal d'Italie tient à faire connaître au Comité de Contrôle qu'il entend se prévaloir, dans la question du port, du droit, qui lui est aussi reconnu par un spécial échange de lettres annexées au protocole du 25 juillet 1928, à l'égalité économique avec les autres Puissances garantes du Statut et que, par conséquent, il ne peut admettre aucune discrimination entre lesdites Puissances.

Le Gouvernement royal d'Italie trouve que le Comité de Contrôle aurait dû adresser aux quatre Puissances garantes une demande identique pour contribuer au service de l'emprunt à contracter pour l'achèvement des travaux du port de Tanger.

J'ai partant l'honneur de vous informer que je suis autorisé à faire connaître au Comité de Contrôle que le Gouvernement royal d'Italie est disposé, non seulement à donner sa contribution au service de l'emprunt en question, mais aussi à faire usage de son droit au régime de l'égalité économique en prêtant son concours dans une mesure non inférieure à celle de la Puissance qui y participera avec la contribution la plus élevée.

Veuillez, &c.
DE FACENDIS.

[W 3137/3137/28] No. 19.

Mr. Gurney to Mr. A. Henderson.—(Received March 27.)

(No. 55.)

Sir, *Tangier, March 20, 1930.*

WITH reference to your despatch No. 288 of the 21st December last relative to the Shraa Court of Appeal, I have the honour to transmit to you herewith copy of an agreement in regard to the nomination of its judges, signed on the 6th instant in quadruplicate by my French, Italian and Spanish colleagues and myself.

2. I trust that you will approve its terms, which, I think, embody all our desiderata in a workable form.

I have, &c.
(For the Consul-General),
C. G. HOPE-GILL.

Enclosure in No. 19.

Accord relatif à la Présentation officieuse des Ouléma Assesseurs du Tribunal spécial d'Appel du Chrâa.

LE Maghzen chérifien ayant décidé qu'en vue de récusations possibles, une liste de trois ouléma de Tanger, destinés à constituer le siège du Tribunal spécial d'Appel du Chrâa prévu par l'article 39 du dahir du 30 mai 1925, et organisé par le dahir du 30 mai 1927, serait dressée par son Excellence le Mendoub et soumise à l'agrément de Sa Majesté le Sultan dans le courant du mois de décembre de chaque année.

Les consuls généraux d'Espagne, de France, de Grande-Bretagne et d'Italie soussignés, dûment autorisés par leurs Gouvernements respectifs, sont convenus des dispositions suivantes, qui modifient et étendent les dispositions (dont le texte est ci-annexé*) de l'accord conclu à Madrid par l'échange de lettres des 16-25 octobre 1926 :

(1) Chacun des consuls généraux d'Espagne, de Grande-Bretagne et d'Italie fera choix de deux culéma de Tanger, dont les titres seront l'objet d'un amical échange de vues entre lui et son collègue de France. Un accord amiable étant intervenu entre ces deux représentants, l'alem dont les titres auront été retenus sera signalé spécialement à l'attention de son Excellence le Mendoub par le consul général intéressé comme étant particulièrement désigné pour figurer sur la liste des trois ouléma présentés à l'agrément de Sa Majesté ;

* Not printed.

(2) Le consul général de France, à qui la Résidence générale à Rabat a communiqué la traduction française (annexée au présent protocole*) des instructions adressées au Mendoub par le Maghzen chérifien, s'emploiera éventuellement à ce que ces instructions ne soient pas perdues de vue, particulièrement en ce qui concerne la récusation et le respect du tour de rôle. Il est entendu que les deux premiers ouléma appelés à siéger seront désignés par le sort; il est également entendu que le tribunal siégera chaque fois qu'il y aura une affaire inscrite au rôle ;

(3) Les consuls généraux soussignés prennent acte de ce que le Maghzen chérifien a précédemment décidé qu'une indemnité de vacation serait servie par lui aux ouléma assesseurs et calculée à raison de 50 fr. par jour de session ;

(4) La procédure de présentation officieuse prévue ci-dessus sera utilisée pour la constitution du tribunal spécial pour l'année 1930.

Fait à Tanger, le 6 mars 1930, en quatre exemplaires.

HUGH GURNEY.
DE RIALP.
P. DE WITASSE.
DE FACENDIS.

[W 3137/3137/28] No. 20.

Foreign Office to Mr. Gurney (Tangier).

(No. 80.)

Sir, *Foreign Office, April* 1, 1930.

I AM directed by Mr. Secretary Henderson to acknowledge the receipt of your despatch No. 55 of the 20th March last, and to inform you that he approves the terms of the agreement signed on the 6th March last regarding the nomination of the judges of the Shraa Court of Appeal.

I am, &c.
C. HOWARD SMITH.

[W 3985/199/28] No. 21.

Mr. Gurney to Mr. A. Henderson.—(Received April 22.)

(No. 70.)

Sir, *Tangier, April* 11, 1930.

WITH reference to my despatch No. 47 of the 5th ultimo, I have the honour to report that the Committee of Control dealt again with the question of the proposed new port loan at a sitting which it held yesterday, when it considered a letter from the Administration communicating an enquiry from the International Legislative Assembly as to the action taken by the committee on the motions to which I referred in my despatch No. 20 of the 18th January last. These motions were to the effect that the Shereefian Government should be asked to guarantee a loan of 40 million francs and that the Powers, particularly France and Spain, should be asked to assist in providing the service of such a loan.

2. As reported in my despatch No. 29 of the 30th January, the Committee of Control decided on the 25th January that the various representatives should enquire the attitude of their Governments on the latter question.

3. At yesterday's sitting we asked each other in turn what replies had been received. My Italian colleague recalled that, as reported in my despatch No. 47 above mentioned, his Government had expressed their readiness to contribute towards the service of the proposed loan to an extent not inferior to that of the Power making the highest contribution. I stated that I understood that His Majesty's Government were not prepared to make any contribution. Categorial replies on this point had, it appeared, not been received from the other Governments, though there seems to be no reason to suppose that any of them are inclined to assist the zone in this way.

4. My French colleague, however, confirmed his previous statements to the effect that the Shereefian Government were prepared to guarantee a loan of 42 million francs, and that arrangements were being made for the issue of such a loan at 5 per cent. He

* Not printed.

[W 4959/199/28] No. 21 A.

Mr. Gurney to Mr. A. Henderson.—(Received May 15.)

(No. 82.)

Tangier, May 6, 1930.

Sir,

I HAVE the honour to report that, in accordance with the provisions of the protocol, the numbers of the gendarmerie were reduced to 250 men as from the 1st instant.

2. As reported in my despatch No. 38 of the 13th February, two budgets were produced for the gendarmerie at the end of last year, one for the first period of four months of 1929, during which the force was to number 400 men; the other for the remaining period of eight months, when the number of the force was to be reduced to 250. The first budget was duly voted and published, but the acceptance of the second budget was made dependent on an assurance being obtained from the French and Spanish Governments that they would bear the additional cost in excess of the sum for which they are liable under the terms of the protocol. The cost of the 250 men was estimated at 1,693,528·22 fr., of which the zone is liable for 1 million francs and the French and Spanish Governments each to two-thirds of the sum of 350,000 fr. which each undertook to contribute annually.

3. When the matter came before the Committee of Control, my French and Spanish colleagues were asked to ascertain from their Governments whether they were prepared to undertake this liability. Letters have now been received and communicated to the Committee of Control stating that both Governments are prepared to increase their contributions, if necessary, up to a sum of 346,764·11 fr.

I have, &c.

HUGH GURNEY.

also stated that we could count on the conclusion of an arrangement between the French and Spanish Governments under which the Tangier Zone would be relieved of all payments on account of the service of the 1904 and 1910 loans.

5. In view of this declaration it was decided to reply to the Assembly, through the Administrator, to the effect that the Maghzen would guarantee the loan, and that it was hoped to issue it at 5 per cent.; that the members of the Committee of Control had not failed to approach their Governments in the sense desired by the Assembly, but that meanwhile the prospect had arisen of the conclusion of an arrangement for the relief of the zone from the service of the 1904 and 1910 loans, which would render unnecessary any assistance from the Powers towards the service of the port loan.

6. At the same sitting the committee approved a law voted by the Assembly authorising the Administration to advance to the port company, in the form of short-term loans without interest, a sum not exceeding 5 million francs, to be taken from the reserve fund, on the understanding that such advances will be reimbursed out of the proceeds of the new port loan. It is calculated that these advances will enable the port works to be carried on for another five months, which should allow sufficient time for the issue of the loan.

7. I enclose herein copy of a motion adopted by the Assembly at the same time, in which they authorise the Administration to negotiate with the port company an *avenant* to the existing port convention. Such an *avenant* will be required to define the new conditions resulting from the loan and to provide for a further time-limit for the construction of the port. It is to be hoped that it will be very carefully drafted, so as to safeguard fully the rights of the International Administration.

I have, &c.

HUGH GURNEY.

Enclosure in No. 21.

Propositions des Commissions des Finances et des Affaires maritimes en vue de consentir des Avances à la Société du Port.

EN attendant qu'une solution intervienne en ce qui concerne les fonds nécessaires à l'exécution du projet du port, afin d'éviter que les travaux en cours soient interrompus et par mesure exceptionnelle, l'Administration de la zone est autorisée à accéder à une demande éventuelle que la société du port pourra lui faire en vue de lui consentir des avances. Ces avances, qui pourront s'élever à 5 millions, à la condition que la marche normale des services de la zone n'en sera pas entravée, seront remboursées à l'Administration de la zone sur les fonds provenant de l'emprunt projeté.

2. En vue de diminuer les charges afférentes à ces avances, l'Administration est autorisée à les consentir sans intérêt. Les fonds en provenant seront exclusivement employés aux travaux. Ceux-ci seront réglés aux conditions de prix ressortissant de la série et annexes en vigueur pour les 31 millions fixés aux textes de concession.

3. Il est bien entendu que ces avances n'engagent en rien la liberté de la zone pour l'avenir et ne sauraient préjudicier les conditions de l'avenant à intervenir à propos du rajustement du capital et de la continuation des travaux.

4. Par ailleurs, l'Administration est autorisée à entamer des négociations avec la société du port de manière à pouvoir soumettre à l'Assemblée législative, avant le 30 avril prochain, un projet d'avenant à la convention du port. Ce projet d'avenant sera établi en s'inspirant des principes contenus dans la motion votée par l'Assemblée législative à la date du 9 décembre dernier. Il spécifiera la consistance et la durée des travaux qui seront à exécuter en tenant compte de l'expérience et des besoins réels et du désir, plusieurs fois exprimé, quant à la longueur du brise-lames. Il comportera notamment, et par rapport à la convention actuelle, une amélioration des prix de base et des formules de variation de ces prix. Enfin, l'Administration devra rechercher le moyen de faire participer la zone aux avantages de prix pouvant résulter d'une adjudication éventuelle par la société du port.

La commission se permet, enfin, de recommander à l'Assemblée que le Comité de Contrôle soit prié de faire connaître la suite qui a été à la motion votée par l'Assemblée à la date du 9 décembre 1929.

[W 5781/2872/28] No. 22.

Mr. Gurney to Mr. A. Henderson.—(*Received June 5.*)

(No. 96.)

Sir, *Tangier, May 27, 1930.*

I HAVE the honour to report that a question has recently arisen in regard to the electric light supply at Tangier.

2. This supply is at present in the hands of a Spanish company, under the terms of a concession granted in 1910 for a term of twenty-five years. The operations of the company have not been successful, and the supply of light has been defective. For some time past the company has been in negotiation with the French company which supplies water to Tangier for amalgamation, and a proposal has been under examination by the appropriate commission of the Assembly for the grant to this amalgamation of a monopoly for the supply of light and power to Tangier.

3. At the same time, another company, the Sociedad Anónima Electras Marroquiés, which supplies light and power in the Spanish Zone, has also submitted an application for a concession, on terms much more favourable than those offered by the proposed Franco-Spanish amalgamation. The company is an important concern, and is about to construct large hydraulic works on the Wad Lau, which should provide at small cost ample power not only for the Spanish Zone, but also for Tangier.

4. The question has arisen in this connexion as to whether the Administration of the Tangier Zone can properly grant a concession of this nature without having recourse to adjudication. The commission which is studying the matter submitted a resolution to the Assembly at its last meeting to the effect that the Committee of Control should be asked to declare whether concessions for public services could be given directly or whether they must be submitted for public adjudication. The motion was, however, withdrawn, and the Assembly has so far merely taken note of the proposal submitted to it by the Electras Marroquiés.

5. I have now received a letter, of which I enclose a copy, from the British Chamber of Commerce, calling my attention to the importance of the maintenance of the principle of economic equality in the granting of concessions and monopolies, and the principles of adjudication. I have informed them in reply that I am fully alive to the importance of maintaining this principle, which is specifically safeguarded by the provisions of the Tangier Statute, and that I will at all times use my best endeavours to ensure the strict observance of these and other treaty stipulations to which His Majesty's Government are a party. I have also explained my position to the president of the chamber more fully in conversation.

6. The matter has not yet come before the Committee of Control, but when it does I propose to take the line which has hitherto been adopted by His Majesty's Government, at any rate as regards the Spanish Zone of Morocco, that such adjudication is necessary. In this connexion, I would refer to your despatch No. 68 of the 1st March, 1929, in which the matter was fully discussed.

7. I am all the more disposed to maintain this attitude in view of the position taken up by the American Government in the matter. It will be recollected that the position of His Majesty's Government is weakened by the terms of the Franco-German Treaty of the 4th November, 1911. The American Government are, however, not parties to that treaty, and they are entitled to base any representations that they may make purely on the provisions of the Act of Algeciras. The Committee of Control are, for their part, required by the statute not only "to ensure the observance of the régime of economic equality," but also to see that all treaties in force are respected. I conceive, therefore, that I am not only entitled to insist that treaties to which His Majesty's Government are a party are observed, but that I am also required as a member of the Committee of Control to see that any rights secured to other countries, at any rate such as are signatories of the Act of Algeciras, are strictly respected.

8. I enclose copy of a letter which my American colleague has addressed to the Resident-General of the French Protectorate, calling attention to the discussions which have taken place in regard to this concession, and requesting him to recall to the authorities of the Tangier Zone that, in virtue of treaty provisions, the conditions under which any concession of this nature may be granted by the Tangier Administration must be such as to make it possible for American nationals to participate on terms of perfect equality with concerns of any other nationality. Mr. Blake has communicated this note to me quite unofficially, and I do not know

what action the Resident-General will take upon it. He will presumably forward a copy to the president of the Committee of Control.

9. The question is one of some importance, and I trust that the Committee of Control will be in a position to ensure that the principle of adjudication is maintained. Apart from the question of principle, it is possible that some British firm may be inclined to tender for the concession. I have already received an application for information as to the terms on which a tender could be submitted for the installation of a new electrical supply system.

10. So far as the proposed amalgamation of the French and Spanish companies is concerned, the matter is covered by an exchange of notes which took place between the French Minister for Foreign Affairs and the Spanish Ambassador in Paris at the time of the ratification of the Tangier Convention by the Spanish Government. These letters, which are dated the 7th February, 1924, provide that if the Spanish telephone and electric light concessions are contested, the French consul will be instructed to use his influence for the recognition of the rights of these two companies, whilst, as regards the electric light concession, the two Governments undertook to endeavour to bring about an arrangement between the Spanish company, a French group, and possibly foreign firms, for the exploitation of electricity in Tangier. It would, therefore, seem that the hands of both my French and Spanish colleagues are tied to some extent, and that it will be difficult for them not to support the grant of a concession to the combination there foreshadowed, even without adjudication.

11. So far as I am aware, however, His Majesty's Government are in no way bound by this exchange of notes, and I anticipate that at any rate my Dutch and Italian colleagues, if not also the Belgian and Portuguese consuls-general, will adopt an attitude similar to my own.

I have, &c.
HUGH GURNEY.

Enclosure 1 in No. 22.

British Chamber of Commerce for Tangier and Spanish Zone of Morocco to Mr. Gurney.

Sir, *Tangier, May 22, 1930.*

I HAVE pleasure in attaching hereto a copy of a resolution passed by this chamber at their meeting held on the 21st May.

Yours faithfully,
R. WARREN, *Secretary.*

"The chamber of commerce considers that the present is a fitting occasion to call the attention of His Majesty's consul-general to the vital importance of the strict maintenance of economic equality in the granting of concessions, monopolies, and in the principle of adjudication.

"The chamber trusts that the consul-general will continue to use his best efforts to urge the adherence of His Majesty's Government to this principle."

Enclosure 2 in No. 22.

American Diplomatic Agent to Resident-General, French Concession.

Mr. Resident-General, *Tangier, May 19, 1930.*

I HAVE the honour to draw your Excellency's attention to certain discussions which have recently taken place in the committees of the Legislative Assembly at Tangier, and from the trend of which it is apprehended that decisions might eventually be taken by that body in violation of the treaty rights of the United States in Morocco.

There is now before the aforesaid Assembly, or is shortly to be presented by the appropriate committees, for its consideration and decision, an application made by the Compañía Electra Hispano-Marroquí and the Société marocaine de Distribution d'Eau, de Gaz et d'Electricité for the grant to themselves without public adjudica-

tion of a concession for the supply of electric fluid for lighting and power purposes in the city of Tangier and its surroundings.

I have, therefore, the honour to request your Excellency to be good enough to recall to the competent authorities of the Tangier Zone of the Shereefian Empire that, in virtue of the treaty provisions concerning economic equality among the Powers, and notably in view of the specific terms of the Act of Algeciras in the premises, the conditions under which any concession or contract of the nature in question may be granted by the Tangier Administration must be such as to make it possible for American nationals to participate in the bidding for such enterprise, on terms of perfect equality, with concerns of any other nationality.

In view of the circumstances above set forth, I venture to stress the necessity for urgent action on the part of your Excellency, in this connexion.

Please accept, &c.

MAXWELL BLAKE,
American Diplomatic Agent.

[W 5781/2872/28] No. 23.

Foreign Office to Mr. Gurney (Tangier).

(No. 149.)

Foreign Office, June 21, 1930.

Sir,

I AM directed by Mr. Secretary Henderson to acknowledge the receipt of your despatch No. 96 of the 27th May last in which you referred to the proposal to grant a monopolistic concession for the supply of electric light and power to Tangier to a Franco-Spanish company, and enquired whether the Administration of the Zone was entitled to grant a concession of such a nature without having previous recourse to public adjudication. The Secretary of State has given full consideration to the matter and entirely concurs in your proposal that when the matter comes before the Committee of Control you should insist that all such concessions must be allocated by public adjudication.

2. On general principles it seems clearly to the disadvantage of the zone that any concession for public works should be granted directly to one particular firm without the opportunity being given to other concerns of submitting more favourable offers. From the point of view of this country it is important to maintain the principle of adjudication in order that British firms may not be debarred from tendering for any such concessions in the zone which may be of interest to them. Furthermore, any departure from the system of public adjudication in the Tangier Zone might tend to encourage the French and Spanish authorities to ignore in their respective zones the rules laid down by the Act of Algeciras.

3. From the legal point of view it might be somewhat difficult for His Majesty's Government to argue on their own behalf that in the particular case at issue the concession should only be granted by means of public adjudication. Although it was originally laid down in the Act of Algeciras that all concessions concerning the exploitation and execution of public works were only to be granted by means of public adjudication, it was subsequently provided in the Franco-German Convention of 1911, to which His Majesty's Government acceded, that the right of exploitation of "roads, railways, harbours, telegraphs, &c.," was to be reserved to the Shereefian Empire, or might be freely granted by it to third parties. Electric light works are not specifically mentioned in this article, but presumably they are covered by the expression "&c.," and it might therefore be difficult for His Majesty's Government to claim that the grant of a concession for the exploitation of the electric light service in the Tangier Zone must of necessity be subjected to the rules of public adjudication. On the other hand, however that may be, there are, as you point out, several States signatories of the Act of Algeciras, notably the United States of America, which have never acceded to the Franco-German Convention of 1911, and which have therefore maintained unimpaired their rights deriving from the Act of Algeciras. These States are entitled to claim that in Tangier, as elsewhere in Morocco, all concessions including those for the exploitation as opposed to the construction of public works should be allocated by means of public adjudication, and they are entitled to insist that no steps be taken by the Tangier Administration which might infringe their treaty rights. The Tangier Statute specifically entrusts the Committee of Control

with the task of ensuring proper observance of the provisions of the statute, and one of these provisions is that the existing treaties shall not be infringed. It is, therefore, clearly the duty of the Committee of Control to see that no steps are taken by the Tangier Administration which might modify the rights in the matter of the allocation of concessions enjoyed by the signatories of the Act of Algeciras.

4. In regard to the question raised in the last two paragraphs of your despatch, you are correct in assuming that His Majesty's Government are in no way bound by the notes exchanged on the 7th February, 1924, between the French Minister for Foreign Affairs and the Spanish Ambassador at Paris.

I am, &c.

C. HOWARD SMITH.

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